



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 10 मार्च, 2016/20 फाल्गुन, 1937

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 03rd March, 2016

No: Sharm(A)6-3/2014 (Awards).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No.	Case No:	Title of the Case	Date of Award
1.	31/2012	Seema Thakur V/s Head Master, Bishop Cotton School Shimla Himachal Pradesh.	02-01-2016
2.	10/2014	Raminder Singh V/S M/S Link Utsav Ventures.	02-01-2016
3.	51/2012	Devi Ram V/s HPSEB Sunni.	02-01-2016
4.	01/2015	Smt Meghna Sharma & Ors V/S M/s Wild Craft India Pvt. Ltd Solan.	04-01-2016
5.	17/2012	Roshan Lal V/S BDO Basantpur.	04-01-2016
6.	43/2012	Smt Rekha Devi V/S M/S VMT Spining Company Ltd.	12-01-2016
7.	70/2015	Shri Surinder Pal V/S M/S Alliance Fomulations, Baddi.	14-01-2016
8.	80/2015	Shri Kuldeep Shastri V/S M/s National Pharmaceuticals.	15-01-2016
9.	19/2012	Manu Pratap Singh V/S Commissioner, Municipal Corp, Shimla.	20-01-2016
10.	78/2013	Devi Chand M/s DFO, Shimla & Others.	20-01-2016
11.	79/2013	Ramesh Chand V/S -do-	20-01-2016
12.	80/2013	Dhayan Singh V/S -do-	20-01-2016
13.	81/2013	Tej Ram V/S -do-	20-01-2016

By order,

Sd/-

Pr. Secretary (Lab. & Emp.).

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P).**

Ref No. 31 of 2012.

Instituted on. 14.6.2012.

Decided on 2.1.2016.

Seema Thakur D/o Shri Surjan Singh Thakur R/o Village & P.O Kothipura, District Bilaspur, HP.
.....Petitioner.

Vs.

The Head Master, Bishop Cotton School, Shimla-2, HP.

.....Respondent

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Niranjana Verma, Advocate.

For respondent : Shri Ranvir Chauhan, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Ms. Seema Thakur D/o Shri Surjan Singh Thakur, workman by the Head Master, Bishop Cotton School, Shimla 171002 w.e.f. 3.12.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. Briefly, the case of the petitioner is that against the illegal termination, she raised demand notice upon which conciliation was made which failed. The petitioner was engaged as a relieving matron by the respondent school w.e.f. May, 2000 and worked in various capacities with utmost zeal and sincerity and her good work had been appreciated by her superiors and students of the school. It is further stated that at the time of her appointment, the petitioner was made to understand that her appointment was initially on probation for one year and thereafter, if her work was satisfactory, she would be absorbed in the institution on regular basis and on completion of one year of probation period, her services were further extended up to 31.5.2001 on a fixed salary of Rs. 3600/- along-with free meals and service benefits as per the rules and regulations of the school. Vide letter dated 31.5.2001, the services of the petitioner had further been extended and despite putting about two years of service, she had not been regularized or made permanent, hence, vide letter dated 22.11.2002, she requested respondent to make her appointment permanent. Thereafter, the respondent released the service benefits to the petitioner as that of a regular employee and continued in service till 3.12.2004, when her services had been suddenly and unilaterally dispensed with without assigning any reason. It is also stated that the petitioner is an honest and dedicated worker and had been a part of the prestigious institution for more than four years and she was discriminated against the employee, who was junior to her. The petitioner approached the respondent vide letter dated 10.11.2004 stating therein that she had been discriminated against. Thereafter, her services had been terminated and as such grave injustice has been caused to the petitioner as no reason whatsoever had been attributed of her said termination. The petitioner had completed 240 working days in each and every calendar year and her services were regular in nature against a permanent post. The respondent had also retained juniors to the petitioner and after her termination fresh appointments have been made, hence, the act of the respondent is in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) and also principles of natural justice. The services of the petitioner had been terminated without compliance of section 25-F of the Act. Against this back-drop a prayer for reinstatement along-with all consequential service benefits of pay, arrears, seniority etc., with interest @ 9% per annum has been made.

3. The respondent contested the claim by filing a reply wherein preliminary objections regarding contractual service, concealment of material facts and that the claim is barred by principle of res-judicata had been raised. On merits, the respondent admitted that the petitioner was engaged as relieving matron on the basis of personal service contract dated 6.4.2000 w.e.f. 1.5.2000 to 31.7.2000 vide letter dated 31.7.2000 which was extended from 1.8.2000 to 31.12.2000. It is denied that the petitioner had been working with zeal and her services were indispensable. It is further denied that her good work had been appreciated by all or anyone. It is asserted that the petitioner had failed to perform her duties properly and on the report of Senior Master her

explanation was also called vide letter 15.9.2003. It is denied that vide letter dated 31.5.2001, a fresh contract of services was entered with the petitioner and the contract period of services was from 1.6.2001 to 31.12.2002 which was extended till 1.3.2004. The services of the petitioner had been terminated on 3.12.2004 as per terms and condition of the contract of employment and no reasons were required to be given for terminating her services. The respondent prayed for the dismissal of the claim petition.

4. No rejoinder was filed. On the pleadings of the parties, the following issues were struck on 11.12.2013.

1. Whether the termination of services of the petitioner w.e.f. 3.12.2004 without complying with the provisions of the Industrial Disputes Act, 1947 is improper and unjustified as alleged?

OPP.....

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to?

OPP.....

3. Whether this petition is not maintainable in view of preliminary objection no.1?

OPR.....

4. Whether the claim of the petitioner is barred by the principle of res-judicata?

OPR.....

5. Relief.

5. The parties have led their evidence in support of the aforesaid issues.

6. In support of her case, the petitioner appeared into the witness box as PW-1 and tendered her affidavit Ex. PW-1/A in examination-in-chief wherein she reiterated almost all the averments as stated in the claim petition. In cross-examination, she admitted that she had been engaged on contract basis and the contract was read over to her. She admitted that letter Ex. R-1 had been received by her on the basis of which extension had been given to her. She denied that since her work was not satisfactory, hence, vide letter dated 3.12.2004, she had been terminated from service. She admitted that termination order dated 3.12.2004, had been challenged in Civil Court by her and Ex. R-2, is the copy of order. She denied that her juniors had not been regularized but stated that Krishna Rawat, Ishan and others were regularized. She denied that she was terminated as per rules and on the basis of terms and conditions stipulated in contract. She denied that she had not completed 240 days in a calendar year.

7. Conversely, the respondent has examined one Shri Rajesh Pandey, Administrative Officer as RW-1, who has stated that the petitioner was engaged as relieving matron on contractual basis in the year, 2000 and her contract used to be renewed on year to year basis. Her work was not up to the mark and there had been complaints from parents and senior master also wrote letter to Head Master regarding her service. The services of the petitioner had been terminated on the basis of terms and conditions prescribed in Ex. R-1. In cross-examination, he stated that neither any notice was given to the petitioner regarding her unsatisfactory performance nor enquiry was initiated against her. He admitted that the suit was withdrawn by the petitioner on the grounds of jurisdiction as per Ex. R-2. He has no knowledge that two matrons who were junior to the petitioner had been regularized.

8. Besides having heard the learned counsel for the parties, I, have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	Decided accordingly.
Issue no.4	No.
Relief.	Reference answered in against the petitioner and in favour of the respondent per operative part of award.

Reasons for finding

Issue no.1 & 3.

10. Being interlinked and correlated both these issue are taken up and discussed together for decision.

11. The learned counsel for the petitioner contended that the services of the petitioner had orally been terminated by respondent no.1 without any reason despite the fact that she had completed more than 240 working days in a calendar year preceding her termination. He further contended that junior person to petitioner had been regularized by the respondent whereas the services of the petitioner had been terminated without holding any enquiry and even no opportunity of being heard was afforded to her before terminating her services.

12. On the other hand, learned counsel for respondent contended that since the petitioner was appointed on contract basis and her services were not found satisfactory, hence, she was terminated from service as per rules and as per the terms and conditions of her appointment letter.

13. I have gone through the respective contentions of the learned counsel for the parties and also closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was appointed as relieving matron on contract basis and worked as such initially w.e.f. 1.5.2000 to 31.7.2000 and thereafter her contract was used to be renewed on year to year basis. The perusal of letter dated 6.4.2000 Ex. RW-1/B, shows that the petitioner was offered a temporary position as relieving matron w.e.f. 1.5.2000 to 31.7.2000 on a fixed salary of Rs. 3600/- per month and she had accepted the employment with the respondent on the aforesaid terms and conditions. The perusal of letter dated 31.5.2001, Ex. R-1 also shows that the petitioner was given extension on contract basis from 1.6.2001 to 31.12.2002 on fixed basic salary or Rs. 3400/- plus dearness allowances etc. In her cross-examination, before this Court as PW-1, the petitioner admitted that she was appointed on contract basis and the contract was read-over to her. She further admitted that on the basis of letter Ex. R-1, she was given extension. Therefore, from the perusal of entire evidence, it stands duly proved on record that the petitioner was engaged by the respondent on contract basis w.e.f. 1.5.2000 to 31.7.2000 and thereafter her contract was renewed from time to time and she was given extension in service after having accepted the terms and conditions stipulated in the appointment letter. In **2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. V. Y.D Deshpande & Ors, it has been held that:-**

“The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the

post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.

In 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. the Hon'ble Supreme Court has held as under:

“11. The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.

12. Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise.”

14. In the instant case, admittedly, the petitioner was engaged on contract basis. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that the petitioner had been engaged on contract basis, who was not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947 and that her case falls within the exception as prescribed under section 2(oo)(bb) of the Act. Consequently, both these issues are answered accordingly.

Issue no.2.

15. Since, the petitioner has failed to prove issues no.1 & 3, above, this issue becomes redundant. ***Issue no.4.***

16. In support of this issue, the respondent has contended that since the petitioner has exercised her civil right by filing a civil suit for declaration and permanent prohibitory injunction on the same cause of action, hence the present claim is barred by the principle of res-judicata. However, from the perusal of the order dated 10.1.2005, Ex. R-2 passed by the Ld. Civil Judge, Sr. Division Court No.1, Shimla, it is clear that the application filed by the applicant under order 39 rule 1 & 2 CPC was dismissed for want of jurisdiction and thereafter, vide order dated 5.3.2005, the suit was dismissed as withdrawn and no findings have been given by the Ld. Civil Judge, Senior Division on the merits of the case. Therefore, it cannot be said that the claim of the petitioner is barred by the principle of resjudicata, as such, the issue is decided against the respondent and in favour of the petitioner.

Relief

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the

appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 2nd day of Jan., 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref.10 of 2014

Raminder Singh V/s M/s Link Utsav Ventures (P) Ltd & Others

2.1.2016:

Present:- None for the petitioner.

Shri S.K.Banyal, Advocate vice Csl for the respondent.

Today, the case was filed for the service of petitioner. The report received on notice is revealing that the service of petitioner could not be effected for want of correct address. I Have perused the record. The notice to be petitioner was sent on the address given by the Labour Commissioner on the reference it self. In the absence pf Correct Address of petitioner. It is not possible to effect his service. So, to further adjourn the case would be futile exercise. At the same time it is relevant to mention that the Labour Commissioner has informed the petitioner about the present reference by sending a copy of this reference to him. So, petitioner was having knowledge that the reference was sent to this Court by the Labour Commissioner. Thus, he could have himself appeared before this court in order to file his claim.

In the light of aforesaid facts, it appear that at present petitioner is not interested to press his claim. The following reference qua the termination of services of petitioner was received from appropriate government for adjudication.

“ Whether termination of the services of Shri Raminder Singh R/o VPO Salogra, Tehsil and District Solan., HP w.e.f. 25.9.2012 by the employer M/s Link Utsav Ventures Private Ltd , Sabzi Mandi Solan. District Solan, HP (present office) , M/s Link Utsav Ventures Private Ltd , “D34, Basement Jungpura, Extension, New Delhi-110014(Regd Office) without complying with the provisions of the Industrial Dispute Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

In the absence of any claim petition and evidence on behalf of petitioner. It cannot be held that his services were wrongly and illegally terminated by the respondents . Hence, the reference awarded against the petitioner and the award is pass accordingly . However, liberty is granted to the petitioner to agitate has termination for services by filing an application before as Court in order to

revive the reference. Let a copy of this award be sent to the appropriate government for publication in official gazette. File , after completion be consigned to records.

Announced:

2.1.2016

Sd/
Presiding Judge Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P).**

Ref. No. 51 of 2012.
Instituted on. 26.7.2012.
Decided on 2.1.2016.

Devi Ram S/o Shri Besar Dass R/o Village & P.O Rewag, Tehsil Sunni, District Shimla,
HP.
.....Petitioner.

Vs.

The Executive Engineer, HPSEB Electrical Division Sunni, Tehsil Sunni, District Shimla,
HP.
.....Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Neel Kamal Sood, Advocate.

For respondent : Shri Ramakant Sharma, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of the services of Shri Devi Ram S/o Shri Besar Dass R/o Village Rewag, P.O Rewag, Tehsil Sunni, District Shimla, HP by The Executive Engineer, HPSEB Electrical Sunni, District Shimla w.e.f. 1.6.1998 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?”

2. In nutshell the case of the petitioner is that in the month of June, 1993, initially he was engaged as daily wages beldar by the respondent and worked as such continuously to the utmost satisfaction of his superiors till 31.5.1998 on which date his services had been orally terminated without assigning any reason. It is further stated that the petitioner was assured by the respondent that on the availability of work and funds, he would be re-engaged. The respondent engaged fresh persons but the petitioner was not called to re-join his duties. Feeling aggrieved by the wrongful action of respondent, the petitioner filed an OA before the Administrative Tribunal which was

disposed of for want of jurisdiction. Thereafter, the petitioner raised an industrial dispute which was rejected by the Labour Commissioner vide order dated 15.11.2006 and then the petitioner filed a Civil Writ Petition before the Hon'ble High Court which was allowed and the Labour Commissioner referred the matter to this Court for adjudication. It is also stated that juniors to the petitioner, as named in para 7 of the petition, are still working with the respondent and even fresh persons have also been engaged by the respondent in violation of the provisions of last come first go. Not only this, the respondent also violated the provisions of Industrial Disputes Standing Orders. The services of the petitioner had been terminated without serving any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) despite the fact that he had completed 240 days in each calendar year. Against this back-drop a prayer for his reinstatement with all the consequential service benefits including back-wages has been made.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, no legal enforceable cause of action, delay and laches, concealment of material facts and that the petition is bad due to acts, deeds, conduct and acquiescence of the petitioner. On merits, it has been asserted that the petitioner had been engaged as a casual worker on muster roll for specific work, who worked for brief spells from 4.5.1993 to 21.3.1998. The petitioner worked only for 115 days from 4.5.1993 to 25.12.1993, 71 days from 26.12.1993 to 25.4.1994 and 63 days from 1.1.1998 to 31.3.1998 and as such he worked for 249 days in total. The petitioner never completed 240 days in any calendar year and even he was well aware that he was engaged for specific work and on the completion of said work, his services automatically came to an end. It is denied that junior person was engaged except those directed by the Court. It is further asserted that only one beldar Shri Trilok Singh was engaged on daily wages basis as sweeper-cum-chowkidar in Electrical Sub Division, Jalog on 5.8.1999. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties give rise to the following issues which were struck on 5.6.2013.

1. Whether the termination of the services of Shri Devi Ram w.e.f. 1.6.1998 by the respondent without following the provisions of the Act is illegal and unjustified?

OPP.....

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to?

OPP.....

3. Whether this claim petition is not maintainable?

OPR.....

4. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 Yes.

Issue no. 2 Entitled to reinstatement w.e.f. 2.8.2004 but without back-wages.

Issue no. 3 No.

Relief. Reference partly answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issue no.1 .

7. The learned counsel for the petitioner has argued with vehemence that the services of the petitioner had been terminated illegally without following the mandatory provisions of the Act. He further contended that since, the petitioner had completed 240 days in each calendar year, his termination without notice and compensation is against the provisions of the Act and even junior to him are still working with the respondent.

8. On the other hand, Ld. counsel for respondent contended that the services of the petitioner had been engaged for specific work and on the completion of said work, his services stood automatically came to an end. He further contended that the petitioner had not completed 240 days in any calendar year and no junior to him had been retained/engaged by the respondent.

9. To prove his case, the petitioner has examined two PWs. PW-1 Shri Jagat Ram, Assistant Engineer, HPSEB Jalog has stated that the petitioner was engaged in the year, 1993 as beldar as per requirement of work. Along-with petitioner some other persons had been engaged. The petitioner was terminated from service on 21.3.1998 and some of those workers, who had been engaged along-with the petitioner were retained by the respondent and even thereafter some persons have been engaged. The department had engaged one Shri Trilok Singh on 5.8.1999, who was not engaged on the basis of Court orders. The department had not issued any notice to the petitioner to resume his duties. At the time of termination of the petitioner, no notice and compensation had been given to the petitioner. In cross-examination, he stated that the petitioner was engaged for specific work and he had not given anything in writing to the department for his re-engagement. The department had not retained the junior to the petitioner.

10. The petitioner stepped into the witness box as PW-2 to depose that he was engaged as beldar in the month of June, 1993 on daily wages basis at Sunni and continued as such till 31.5.1998. No notice had been given to him. He had completed 240 days and his juniors namely Madan Lal, Gian Chand, Om Prakash, Chet Ram, Bhupesh Kumar, Sita Ram and others had been retained by the department. In cross-examination, he denied that he was engaged for specific work. He admitted that he had worked for 115 days in 1993, 60 days in 1994 and 63 days in 1996. He denied that he had abandoned his job.

11. On the other hand, the respondent has examined RW-1 Shri Raman Chaudhary, Senior Executive Engineer, who has stated that the petitioner Shri Devi Ram had worked with the respondent as per mandays chart Ex. RW-1/A and the Board has neither retained the services of any junior nor any fresh appointment has been made after the year, 1998. In cross-examination, he stated that no notice was issued to Devi Ram prior to the termination of his services and no compensation was paid to him. He has no knowledge that Shri Madan Lal, Gian Chand, Om Prakash, Chet Ram Bhupesh, Sita Ram etc. were junior to the petitioner and they are still working with the Board. He denied that the services of Devi Ram had been terminated illegally.

12. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as daily wages beldar by the respondent w.e.f. June, 1993 and worked as such till 31.5.1998. The perusal of mandays chart Ex. RW-1/A goes to show that the petitioner had worked only for 115 days in the year, 1993, 60 days in the year, 1994 and 63 days in the year, 1998. No, doubt the case of the petitioner is that he had worked

with the respondent till 31.5.1998 and completed 240 working days in every calendar year and also in twelve calendar months preceding his termination but when regard is given to entire evidence on record, except the bald statement of the petitioner there is nothing on record which could show that the petitioner has worked with the respondent till 31.5.1998. Moreover, there is nothing on record which could show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. It is by now well settled that the burden of proof lies on the workman to show that he had worked continuously for 240 days in twelve calendar months preceding his termination. In **2009 (120) FLR 1007 in case titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

13. In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh**, the Hon'ble Supreme Court has held that:-

“19..... In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer.

Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service.....”

A bare perusal of the extract of the judgment produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged by the workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination.

14. From the perusal of mandays chart, Ex. RW-1/A, it is abundantly clear that the petitioner had not completed 240 working days in the calendar year preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner. Thus, having regard to the entire evidence on record and on the strength of the above cited rulings, it can safely be concluded that the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar months preceding his termination.

15. The learned counsel for the petitioner next contended that the persons junior to the petitioner are still working whereas the services of the petitioner had been terminated as such there is a breach of sections 25-G and 25-H of the Act. It has been held by the Hon'ble Supreme Court in a series of judgments that it is not necessary for the workman to complete 240 days during preceding twelve calendar months for taking the benefits of section 25-G and 25-H of the Act. In the decision titled as **Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3**

SCC 192, it was held by the Hon'ble Apex Court that for attracting the applicability of Section 25G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his services and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason⁵. In the present case the petitioner has proved on record by examining PW-1 Shri Jagat Ram, Assistant Engineer, HPSEB Jalog that after the termination of the petitioner, some persons who were engaged along-with the petitioner have been retained and some fresh workers have also been engaged. He further stated that those persons who have completed 240 days have been engaged on the basis of orders of the Court whereas the other persons who have not completed 240 days have been engaged by the department. He also stated that one Shri Trilok Singh was engaged on daily wages on 5.8.1999. The petitioner also stated in his deposition before this Court that his juniors namely Madan Lal, Gian Chand, Om Prakash, Chet Ram, Bhupesh Kumar, Sita Ram and others have been retained. In cross-examination, RW-1 Shri Raman Chaudhary expressed his ignorance that S/Shri Madan Lal, Gian Chand, Om Prakash, Chet Ram, Bhupesh and Sita Ram who were junior to the petitioner are still working with the Board though he admitted that some of those persons have been kept in service on the orders of the Court. He also admitted that no notice was issued to Devi Ram prior to the termination of his services.

16. Thus, having regard to entire evidence on record and in view of above cited rulings, I have no hesitation in coming to the conclusion that after the termination of the services of the petitioner his junior Shri Trilok Singh and others had been engaged by the respondent whereas no notice was given to the petitioner at any point of time to show that he was called by the respondent for employment before the engagement of his junior Shri Trilok Singh and others and as such the termination of services of the petitioner by the respondent without complying with the provisions of the Act, 1947 is improper and unjustified as the respondent has violated the principle of "first come last go" thereby violating the provisions of sections 25-G & H of the Act. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue no.2.

17. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service. It may be pertinent to mention here that after the termination of the services of the petitioner, he had approached the HP Administrative Tribunal, Shimla by filing Original Application which was dismissed for want of jurisdiction and on 2.8.2004, the petitioner raised demand notice before the Labour-cum-Conciliation Officer, Shimla but the Labour Commissioner had refused to refer the matter to this Court vide order dated 15.11.2006. Thereafter the petitioner filed writ petition and the Hon'ble High Court disposed of the aforesaid writ petition on 17.4.2012 with the direction to the Labour Commissioner to refer the matter to this Court. Therefore, in view of the facts and circumstances of the present case, it would be in the interest of justice if the petitioner is ordered to be reinstated in service from the date when he raised the demand notice i.e 2.8.2004.

18. Now, the next question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is

further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

19. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to backwages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

20. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue no.3.

21. In support of this issue, no evidence was led by the respondent. Moreover, I find nothing wrong with this petition which is perfectly maintainable. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Relief

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date when he raised the demand notice i.e 2.8.2004. However the petitioner is not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 2nd Day of Jan., 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref 1 of 2015**Smt Meghna Sharma V/s M/s wildcraft India (P) Ltd Solan****4.2.2016:****Present:-** Shri J.C.Bhardwaj AR for the petitioner.

Shri Rahul Mahajan Advocate for the respondent.

At this stage Shri J.C. Bhardwaj, AR for the petitioner has stated that the workers union have arrived at a settlement with the management under section 2(p) read- with section 12 (3) of the industrial Dispute Act,1947 and Himachal Pradesh Industrial Dispute Rules,1974 vide memorandum of settlement Ex.C-1 and in view of settlement Ex.. C1, all the disputes between the parties as referred to vide reference no. 1/2015 stands settled. To this effect his statement recorded separately.

In view of the statement of Shri J.C. Bhardwaj , I am satisfied that a lawful compromise as per settlement Ex. C-1 has been effected between the parties .Therefore, the reference sent by the appropriate government for adjudication is answered in terms of settlement Ex.C-1 which shall form part of this award/order. Let acopy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
04.01.2016

Sd/-

Presiding Judge, Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 17 of 2012.
Instituted on. 5.12.2012.
Decided on 4.1.2016.

Roshan Lal S/o Shri Gopi Chand R/o Village Palag, P.O Kadarghat, Tehsil Sunni, District Shimla, HP.

.....Petitioner.

Vs.

The Block Development Officer, Basantpur, Tehsil Sunni, District Shimla, HP.

.....Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.**For petitioner :** Shri Naresh Sharma, Advocate.**For respondent :** Shri H.N Kashyap, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of services of Shri Roshan Lal S/o Shri Gopi Chand R/o Village Palag, P.O Kandaghat, Tehsil Sunni, District Shimla HP by the Block Development Officer, Development Block Basantpur, Tehsil Sunni, District Shimla, HP w.e.f. September, 2010 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that initially he was appointed as beldar-cum-peon on daily wages basis by the respondent on 1.12.2009 and worked as such continuously to the utmost satisfaction of his superiors but his services had been terminated on 13.10.2010 without assigning any reason and he was assured that on availability of work and funds, he would be re-engaged but of no avail. Thereafter, the petitioner filed demand notice and the conciliation meetings failed due to unreasoned attitude of the respondent and the matter was referred to this Court under reference. It is further averred that juniors to the petitioner were retained by the respondent, who are still working. The petitioner had completed 240 working days in each calendar year and as such the termination of the services of the petitioner is in violation of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). Against this back-drop a prayer has been made for his reinstatement along-with all the consequential service benefits.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability and concealment of material facts. On merits, it has been asserted that earlier the petitioner was engaged for the purpose to remove bushes etc. from the out-side office of the respondent as per availability of work for which he was compensated from the contingency funds of the Block and now there is no work for the petitioner. The office of the respondent does not falls under the definition of industries and the dispute raised by the petitioner is not covered under the Act. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties give rise to the following issues which were struck on 20.6.2013.

1. Whether the services of the petitioner w.e.f. September, 2010 as stated in the reference and w.e.f. 13.10.2010 as alleged in the claim petition, have been terminated in an illegal and unjustified manner without complying with the provisions of Industrial Disputes Act, 1947 as alleged?

OPP.....

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to?

OPP.....

3. Whether this petition is not legally maintainable as alleged?

OPR.....

4. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1	Yes.
Issue no.2	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issues no.1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act and even juniors to him are still working with the respondent. He further contended that before terminating the services of the petitioner neither any enquiry was conducted against him nor he was afforded any opportunity of being heard.

9. On the other hand, learned ADA appearing on behalf of the respondent contended that since the petitioner was engaged for specific work for the purpose to remove bushes from the outside of the office of the respondent for which he had been paid wages from the contingency funds, hence, he is not entitled to any relief as prayed by him.

10. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in examination-in-chief wherein he reiterated all the averment as stated in the claim petition. In cross-examination, he admitted that he was engaged to remove the bushes. He denied that he had received the total wages of work done by him. He admitted that for his engagement, no written orders had been issued in his favour.

11. On the contrary, the respondent examined one Shri Sanjay Bhardwaj, as RW-1, who stated that he has been authorized to give statement vide authority letter Ex. RW-1/A and tendered his affidavit Ex. RW-1/B in examination-in-chief wherein he reiterated almost all the averments as made in the reply. He also tendered, in evidence, copy of mandays chart of the petitioner Ex. RW-1/C. In cross-examination, he admitted that the petitioner was engaged on daily wages basis on muster roll. Further volunteered that the petitioner was engaged on contingency basis and the wages to him were also paid from contingency funds. He admitted that on 1.12.2009, the petitioner was engaged as beldar-cum- peon. Neither any notice nor any compensation was paid to the petitioner at the time of his retrenchment. He admitted that the services of the petitioner had been terminated orally and no notice to resume his duties had been issued to him. He admitted that as per Ex. RW- 1/C the petitioner had completed more than 240 days in preceding twelve months.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent as beldar-cum-peon w.e.f. 1.12.2009 till 9/2010 which is clear from the mandays chart of the petitioner Ex. RW-1/C. In para no.4 of his affidavit Ex. PW-1/A, the petitioner had admitted that he had worked with the respondent w.e.f. 12/2009 till 9/2010. The perusal of mandays chart Ex. RW-1/C further goes to show that the petitioner had worked for 268 days meaning thereby the petitioner had completed

more than 240 days in twelve calendar months preceding his termination. Even, RW-1 Shri Sanjay Bhardwaj has admitted in his cross examination that the petitioner had worked for more than 240 working days in preceding twelve calendar months. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

- “2. I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year.”

In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana), the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

- “16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.
17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity.....”

13. In the present case also admittedly the respondent had not complied with the conditions precedent to the retrenchment as per section 25-F of the Act which are mandatory in law. Hence, In view of the law laid down by the Hon'ble Supreme Court and our own Hon'ble High Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner w.e.f. September, 2010, by the respondent without complying with the provisions of the Act, is illegal and unjustified.

14. The learned counsel of the petitioner also contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondent as such the respondent had violated the principles of “last come first go”. However, except for the bald statement of the petitioner by way

of affidavit Ex. PW-1/A, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondent. Even, in his cross-examination, the petitioner has admitted that under contingency funds, no person had been employed by the department after his termination. He also admitted that the persons who have been engaged by the department were engaged under the scheme of MANREGA. Thus, keeping in view the entire evidence on record, the petitioner has failed to prove that his juniors have been retained and are still working with the respondent. Hence, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

Issue no.2.

15. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of section 25-F of the Act is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

16. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

17. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to backwages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

18. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No.4.

19. In support of this issue, no evidence has been led by the respondent being the legal issue. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication. I find nothing wrong with this petition which is legally maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages and as such the reference is answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 4th Day of Jan., 2016.

(Sushil Kukreja),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref. 43 of 2012

Smt Rekha Devi V/s M/s VMT Spining company Ltd ,Distt Solan

12.1.2016.

Present:- Petitioner in person with Shri J.C.Bhardwaj, AR
Shri Rajeev Sharma, Advocate for respondent.

At this stage Smt Rekha Devi petitioner has stated that she is ready and willing to settle the matter arising out to reference case no. 43 of 2012 with the respondent by receiving Rs. 20,000/- in lump sump as full & final payment towards all the legal dues of her services with the respondent. To this effect her statement recorded separately.

In view of the statement of petitioner, I am satisfied that a lawful compromise has been effected between the parties and the petitioner has received Rs.20,000/- in lump sump as full & final payment towards all the legal dues of her services with the respondent. Therefore, the reference sent by the appropriate government for adjudication is answered accordingly . The statement of petitioner shall form part of this award/Order. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File , after completion, be consigned to records.

Announced:

12.01.2016

Sd/-
Presiding Judge,
Labour Court, Shimla.

Sh Surender Pal V/s M/s Alliance Formulations, Baddi**14.1.2015:**

Present: None for the petitioner.
Sh Rupesh Sharma Adv, for respondent.

It is 10:45 AM. None appeared on behalf of the petitioner. Be awaited.

(Sushil Kukreja),
Presiding Judge
Labour Court, Shimla.

Present: **Case called again.**
None for the petitioner.
Sh Rupesh Sharma Adv, for respondent.

It is 12:55 PM. but none appeared on behalf of the Petitioner. Be called after lunch.

(Sushil Kukreja),
Presiding Judge
Labour Court, Shimla.

Case called after lunch.

Present: None for the petitioner.
Sh Rupesh Sharma Adv, for respondent.

It is 3:45 PM. but none has appeared on behalf of the Petitioner. The notice sent for the service of the petitioner has been received back duly served as per AD. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner, hence, this court is left with no other alternative but to decide the reference on the basis of material whatsoever is available on the file. The following reference has been received from the appropriate government for adjudication.

“Whether termination of services of Shri Surender pal s/o Shri Dhanu Ram Village Chatipura Kunjhai. P.O. Barotiwala, Tehsil Baddi District Solan, HP w.e.f 4.8.2014 by Managing Director/ Employer M/s Alliance Formulations plot no. 31-32 EPIP, Phase-1 Jharmajri, Baddi, District Solan, HP without complying with the provisions of the Industrial Dispute Act, 1947 as alleged by the workman is legal and justified? If not, to what relief of reinstatement, compensation and other service benefits the above aggrieved workman is entitled to from the above employer/ management ?”

As per reference received from the appropriate government, the petitioner has alleged his termination w.e.f 4.8.2014 without complying with the provisions of Industrial Dispute Act, 1947, to be illegal and unjustified but, the petitioner has failed to appear before this Court despite having been served in accordance with law and to file any claim in support thereof and to lead evidence in

order to show that his services have been illegally terminated by the respondent without complying with the provisions of the Industrial Dispute Act, 1947. It appears that the petitioner is not interested to pursue his case, therefore, he has failed to appear before this court despite service. Hence, in the absence of any claim petition/ evidence on record, the reference is answered against the petitioner. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

14.1.2016

Sd/-
(Sushil Kukreja),
Presiding Judge
Labour Court, Shimla.

Ref. 80 of 2015

Sh Kuldeep Shashtri & others V/s M/s National Pharmaceuticals Pvt, Ltd.

15.01.2016:-

Present:- Sh Rajesh Kumar , President of workers union for petitioner.

Sh Mohit Bhutoria, factory Manager for respondent.

At this stage it has been stated by Shri Rajesh Kumar, President of the workers union that the workers union had entered into a settlement with the management of respondent company under section 12 (3) read with section 18 (3) of the industrial Dispute Act, 1947 before the Labour – cum- conciliation officer, Solan on 5.1.2015 vide settlement Ex.C-2 against the present reference no.80 of 2015 and as such the reference be decided accordingly. To this effect his statement recorded separately.

Sh Mohit Bhutoria, Factory Manager , has also stated that the management has settled the matter with the workers union vide settlement Ex.C-2. To this effect his statement also recorded separately.

Therefore , in view of the statement of Shri Rajesh Kumar , President which has been supported by Shri Mohit Bhutoria , Factory Manager for respondent company .I am satisfied that a lawful compromise under section 12 (3) read with section 18(3)of the Act, before the Labour–cum- Conciliation Officer, Solan vide settlement Ex.C-2 has been effected between the parties.

Hence, the reference sent by the appropriate government to this court for adjudication is answered in terms of settlement Ex. C-2. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File , after completion, be consigned to records.

Announced:

15.1.2016

Sd/-
Presiding Judge Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 19 of 2012.

Instituted on. 1.6.2012.

Decided on 20.1.2016.

Manu Pratap Singh S/o Shri Prem Chand R/o Shanti Bhawan, Below Government School,
Bhagwato Nagar, Lower Khalini, District Shimla, HP.

.....Petitioner.

Vs.

The Commissioner, Municipal Corporation, The Mall Shimla-1.

.....Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Tek Chand, Advocate.

For respondent : Shri Surender Chauhan, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether action of employer i.e The Commissioner, Municipal Corporation, The Mall Shimla-1 to dismiss the daily wage services of Shri Manu Pratap Singh S/o late Shri Prem Chand R/o Shanti Bhawan, below Government School, Bhagwati Nagar, Lower Khalini District Shimla, HP vide order dated 20.8.2010 without conducting domestic enquiry and complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?”

2. In nutshell, the case of the petitioner is that on 23.4.2007, he was appointed as daily wages clerk on compassionate grounds as his father died in harness during the services of the corporation and worked in different sections and he was entrusted the work of distributing the dustbins and register the members for collecting of garbage from door to door scheme and his services had been terminated vide letter dated 20.8.2010. The petitioner had completed 240 days in each calendar year. It is further stated that the petitioner remained absent w.e.f. 10.5.2010 to 18.6.2010 for the reasons beyond his control and he could not deposit receipt book, cash on 10.5.2010 till 18.6.2010, hence, show cause notice dated 12.7.2010 had been served on him, which was duly replied by him. The services of the petitioner had been terminated without conducting any enquiry and affording an opportunity to defend himself. Against this back-drop a prayer for his re-engagement, alongwith back-wages and other consequential service benefits has been made.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, that the petitioner had not approached this Court with clean hands and suppression of material facts. On merits, it has been admitted that the petitioner has joined as daily waged clerk on 23.4.2007 and remained on muster roll in the various section/branches of M.C Shimla. He was assigned the work of distribution of dustbins and collection of membership fee/security under Door to Door Garbage Collection Scheme of SEHB

Society (hereinafter referred to as Society) but the petitioner had not deposited the amount of membership to the tune of Rs. 10,000/- which was collected by him through receipt no. 17251 to 17350 and as such he embezzled the aforesaid amount and remained absented from the duty from 8.5.2010 onwards for which FIR dated 31.5.2010 was lodged against the petitioner in Police Station Sadar. Thereafter, a show cause notice dated 12.7.2007 had been issued to the petitioner and after considering the reply of the petitioner, his services had been terminated vide order dated 20.8.2010. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties give rise to the following issues which were struck on 25.10.2014.

5. Whether the action of the respondent to dismiss the services of the petitioner vide order dated 20.8.2010 without conducting domestic enquiry and complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

OPP.....

6. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to?

OPP.....

7. Whether this petition is not maintainable?

OPR.....

8. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issues no.1 .

7. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that before terminating the services of the petitioner neither any enquiry was conducted against him nor he was afforded any opportunity of being heard.

8. On the other hand, Ld. Counsel for the respondent contended that the petitioner had absented from duty and embezzled an amount of Rs. 10,000/- for which a show cause notice was issued to him and after considering his reply, he was rightly dismissed from service, hence, he is not entitled to any relief.

9. The petitioner stepped into the witness box as PW-1 to depose that he had been working as clerk with the respondent corporation and he was allotted the work to distribute the dustbins and to collect the fees. He further stated that the collected fees had to be deposited once in the office of M.C Shimla in 3-4 days by him but inadvertently he forgotten his bag along-with cash and voucher in the vehicle of Shri Viajy Thakur, who handed over the same to him on 18.6.2010 and due to this reason he had remained absent w.e.f. 10.5.2010 till 18.6.2010. Before terminating his services no notice had been given to him. He had not misused the money of respondent which was deposited by his as per receipts. He was illegally terminated by the respondent. In cross-examination, he denied that he usually remained absent from his duties. He denied that the membership fees amounting to Rs. 10,000/- had not been deposited by him. He further denied that his services had been terminated on account of embezzlement of money and also for remaining absent from duty.

10. PW-2 Shri Vijay Thakur has stated that in the month of August, 2010, he had given lift to the petitioner in his vehicle from Lakkar Bazar to victory tunnel. He further stated that the petitioner had forgotten his bag in his vehicle which was containing cash and receipts and since he (PW-2) remained on tour thereafter, therefore, he returned the bag to the petitioner after one month. In cross-examination, he denied that being friend of petitioner he was deposing on his behalf falsely.

11. On the contrary, the respondent examined one Shri Dalip Narwal, Senior Assistant, who has stated that the petitioner was engaged as daily wages clerk on 23.4.2007 and he worked in different sections. The petitioner had not submitted the collected amount of Rs. 10,000/- with the corporation, hence, an application Ex. RW-1/A was submitted before the SHO Sadar Shimla, who issued a letter to Commissioner, M.C Shimla Ex. RW-1/B. A show cause notice Ex. RW-1/C had also been issued to the petitioner and vide Ex. RW-1/E, the petitioner submitted a written apology with the Commissioner. The petitioner proceeded on leave without any intimation to the authorities. In cross-examination, he admitted that the petitioner worked for more than 240 days in each calendar year. He further admitted that from the year, 2007 to 2010, the petitioner had worked honestly. He admitted that no enquiry had been conducted against the petitioner before terminating his services. He denied that after the termination of the petitioner some other workers had been engaged by the respondent.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent as clerk w.e.f. 23.4.2007 to 19.8.2010. It is also the admitted case of the parties that the petitioner had completed more than 240 working days in each calendar year. The only stand which has been taken by the respondent is to the effect that the petitioner was irregular in performing his duties and did not deposit the amount of membership fees and security to the tune of Rs. 10,000/- which was collected by him and thus he embezzled the aforesaid amount and remained absent from duties from 8.5.2010 onwards for which a show cause notice Ex. RW-1/C was issued to him. The further case of the respondent is that after considering the reply of the petitioner, Ex. RW-1/E, his services were terminated as per order dated 20.8.2010, Ex. RW-1/D. However, it is also the admitted case of the respondent that neither any chargesheet was served upon the petitioner nor any enquiry was conducted against him before terminating his services by the respondent. It is settled legal proposition that a workman, against whom misconduct is alleged, cannot be dismissed or discharged unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if the alleged misconduct is stated to be proved against the workman, he cannot be dis-charged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. In **D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments - 221**, the Hon'ble Apex Court has held as under:

“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”

In the instant case, admittedly, the petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his services, on the basis of alleged misconduct. The learned counsel for the respondent has contended that that the petitioner had confessed his misconduct vide his reply Ex. RW-1/E to the show cause notice. However, the perusal of the aforesaid reply, Ex. RW-1/E, shows that the petitioner had nowhere admitted that he had embezzled the amount of Rs. 10,000/-, hence, it cannot be said that the petitioner had confessed his misconduct as contended by the learned counsel for the respondent. Therefore, the termination order dated 20.8.2010, without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice. The respondent had failed to follow the principles of natural justice before terminating the services of the petitioner.

13. Admittedly, the petitioner had completed more than 240 days in each calendar year, preceding his termination. It has been admitted by RW-1 Shri Dalip Narwal in his cross-examination that the petitioner had worked continuously and completed 240 working days in each calendar year. He further admitted that no enquiry had been conducted against the petitioner before terminating his services. Now, it stands proved on record that the services of the petitioner had been terminated without giving any opportunity of being heard to him and that too without complying the provisions of section 25-F of the Act as no notice had been issued to him before terminating his services. At this juncture, it would be relevant to re-produce section 25-F of the Act, which reads as under:

25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and**
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)**

14. The provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has not complied the conditions of section 25-F as enumerated in clause (a) to (c), precedent to the retrenchment of petitioner. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'bel Apex Court has held as under:

“34.The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further

no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

15. In the present case also no evidence has been produced by the respondent to prove that the petitioner has been given one month's notice in writing indicating the reasons for retrenchment or he has been paid wages for the period of notice as provided under clause (a) of section 25-F. Moreover, no compensation equivalent to the fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months has been paid to the petitioner as per clause (b) of section 25-F. Further, with regard to the provisions of clause (c) of the section 25-F, the respondent has also failed to produce any evidence which could go to show that the notice was served in the prescribed manner on the appropriate government. Therefore, it has become clear that the respondent has not complied with the conditions (a) to (c) of the section 25-F, which are mandatory in nature.

16. Therefore, In view of my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner by the respondent without holding enquiry and without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as such the termination order Ex. RW-1/D is set aside and quashed.

Accordingly, this issue is answered in favour of the petitioner and against the respondent.

Issue no.2.

17. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

18. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

19. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to backwages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

20. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Even, in his statement before the Court, the petitioner has not uttered a single word that he was not gainfully employed after the termination of his services. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No.3.

21. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th Day of Jan., 2016.

(Sushil Kukreja),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 78 of 2013.
Instituted on. 22.10.2013.
Decided on 20.1.2016.

Devi Chand S/o Shri Ganga Ram R/o Village Bir ki Jayan, P.O Chanawag, Tehsil Sunni,
District Shimla, HP.Petitioner.

Vs.

1. The Divisional Forest Officer, Forest Division, Shimla, HP.

2. The Forest Range Officer, Forest Range Sunni, District Shimla, HP.

.....Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether time to time termination of the services of Shri Devi Chand S/o Shri Ganga Ram R/o Village Bir ki Jayan, P.O Chanawag, Tehsil Sunni District Shimla HP during the year 2011 by the Divisional Forest Officer, Shimla, District Shimla, HP without complying with provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that initially he was engaged as daily waged forest worker in Forest Range Bhajji, Sunni, Tehsil & District Shimla since, 1986 and worked as such till 1998. The petitioner had completed 240 days in one calendar year during the period 1986 to 1998 and his services had been orally terminated on 13.5.1998 in an illegal manner. Thereafter, vide settlement dated 22.12.1998, he was re-engaged on 23.12.1998 but he was again terminated on 31.8.1999 and re-engaged on 8.11.2005 vide settlement dated 8.11.2005 and worked as such till 16.8.2011. Then, on 1.1.2012, the petitioner was re-engaged on issuing notice under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the services of the petitioner had been terminated time to time by giving fake and fictional breaks without complying with the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner had completed 240 days preceding twelve months from the date of retrenchment. It is also stated that the respondent engaged juniors to the petitioner, who are still working in the Forest Range, Bhajji out of which two persons namely Shri Amin Chand, Kamal Chand and Smt. Sunita have been regularized in violation of principles of first come last go. Against this back-drop a prayer has been made for the grant of back wages, seniority and compensation for the period when the petitioner has been given the fake and fictional breaks.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objection had been taken that the respondent department is not an industry. On merits, it has been asserted that as per seniority register of Bhajji Forest Range, the petitioner was initially engaged as casual labourer during 1996 and not since 1986. The petitioner had completed 240 days in a calendar year during the period 2005 to 2010 and his services were never terminated as he had not been appointed against any post. The services of the petitioner had been terminated due to non-availability of works as he had been engaged as casual labourer for seasonal forestry works and deployed on work as per seniority and following the principal of “last come first go” and as such the provisions of the Act are not attracted in the case of the petitioner. It is further asserted that the daily wage service of the petitioner were never terminated orally whereas he is still working in Bhajji Forest Range. The department is strictly following the principles of “last come first go” and no junior to the petitioner had been regularized. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties give rise to the following issues which were struck on 23.8.2014.

9. Whether time to time termination of the services of petitioner during the year, 2011 are illegal and unjustified as alleged?

OPP.....

10. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?

OPP.....

11. Whether this Court has no jurisdiction to decide this matter as alleged?

OPR.....

12. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to seniority and continuity but without backwages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issues no.1.

7. The learned counsel for the petitioner contended that since the petitioner had been engaged as daily wage forest worker and had completed 240 working days in each calendar year, his services could not be terminated from time to time without complying with the provisions of the Act. He further contended that the respondent retained the persons junior to the petitioner whose services have been regularized in violation of the principles of “last come first go”.

8. On the other hand, learned ADA appearing on behalf of the respondents contended that the petitioner had been engaged as casual labourer to do the seasonal forestry works and on the completion of such work, the services of the petitioner stood automatically terminated and whenever the work is available, casual labours are being engaged as per seniority and after following the principles of “last come first go”. He further contended that the petitioner is still working with the respondent, who had not completed 240 working days in each calendar year except the year 2005 to 2010 and no junior to him has been regularized, hence, he is not entitled to any relief as prayed by him.

9. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in examination-in-chief wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he denied that he was engaged only for seasonal forestry work whenever the same was available with the department and not throughout the year. He further denied that he had not completed 240 days in any year except in the years 2005 to 2010. He also denied that his services had not been terminated by the respondent but due to un-availability of the work the same stood automatically terminated. He denied that whenever seasonal work was

available, he used to be called by the department for work and the labourers were re-engaged on the basis of seniority and principles of “last come first go”. He denied that breaks were given to him due to the unavailability of work and no fictional breaks were given by the department.

10. PW-2 Shri Sohan Lal Jalota, Labour Inspector has stated that the conciliation proceedings were started on 14.11.2011 and continued till 31.12.2012. The conciliation proceedings failed and report under section 12 (4) had been sent to the Labour Commissioner, who referred the matter to this Court.

11. On the contrary, the respondent examined one Shri Krishan Chand, Range Forest Officer, Sunni, who has stated that the petitioner was engaged as casual labourer in the year, 1996 and thereafter he used to come for work casually and worked continuously from 2005 to 2010. The petitioner had completed 240 days in each calendar year from the year 2005 to 2010. Ex. RW-1/A is the mandays chart of the petitioner. He is still working on bill basis with the department and his services were engaged as per need of the work which came to an end on the completion of the work. Only those workers who have completed eight years of service have been regularized as per seniority and government policy and no junior to the petitioner has been regularized. In cross-examination, he admitted that the petitioner was engaged in the year, 1996. No notice was issued and no compensation was paid to the petitioner before terminating his services. He admitted that no appointment letter had been issued to the petitioner regarding his engagement as casual labourer. He admitted that seniority list mark X and mark Y had been issued by the department. He denied that the petitioner was engaged on daily wage basis. He further denied that S/Shri Nek Ram, Ghan Shyam, Ami Chand, Komal Chand and Ms. Sunita were junior to the petitioner and they are still working with the department. He denied that the petitioner had completed 240 working days in preceding twelve calendar months. He also denied that the department had disengaged the petitioner willfully and that he had not been allowed to complete 240 days. He admitted that there is no document with the reply showing that the petitioner was engaged as casual worker.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent from the year 1996. The perusal of mandays chart Ex. RW-1/A shows that the petitioner had worked for 18 days in the year 1998, 50 days in 1999, 101 days in 2000, 57 days in 2001, 60 days in 2002, 192 days in 2003, 205 days in 2004, 285 days in 2005, 363 days in 2006, 351 days in 2007, 346 ½ days in 2008, 362 days in 2009, 258 days in 2010 and 130 days in 2011. No doubt, the petitioner had tried to establish on record that he was engaged in the year, 1986 but at the same time he has failed to produce any documentary evidence to show that he had been engaged by the respondent in the year 1986. It has been admitted by RW-1 Shri Krishan Chand in his cross-examination that the petitioner was engaged in the year 1996. Except for the bald statement of the petitioner, there is nothing on record which could go to show that initially the petitioner was engaged in the year, 1986. Therefore, I have no hesitation in holding that the petitioner was engaged by the respondent in the year, 1996 and not in the year 1986 as stated by the petitioner.

13. As per the claim petition, the services of the petitioner were terminated on 16.8.2011 i.e only once during the year, 2011 and thereafter he was re-engaged by the respondent after issuing a notice under section 2-A of the Act on 1.1.2012 and is still working with the respondent. This fact has not been specifically denied by the respondent. Therefore, it is clear that the services of the petitioner were terminated only once during the year, 2011. Now, the next question which arises for consideration before this Court is that as to whether the termination of the services of the petitioner during the year, 2011 is illegal and unjustified. It is the admitted case of the parties that the petitioner had completed 240 working days from the years 2005 to 2010 and thereafter his services had been terminated without any prior notice as required under section 25-F of the Act. To this effect, the case of the respondent is that the petitioner was engaged as casual labourer for seasonal

work, who used to come for work casually. But when regard is given to the mandays chart Ex. RW-1/A, it is abundantly clear that the petitioner had worked for more than 240 days i.e 285 days in 2005, 363 days in 2006, 351 days in 2007, 346 ½ days in 2008, 362 days in 2009 and 258 days in 2010. Since, the petitioner had completed more than 240 days in the years 2005 to 2010 as per mandays chart Ex. RW-1/A, it cannot be said that the petitioner was engaged for specific/seasonal work as alleged by the respondent. Moreover, the respondent has failed to produce on record any document which could go to show that the petitioner was engaged for seasonal work. It was incumbent upon the respondent to have disclosed to the petitioner that he had been engaged for specific work but the same is missing in the present case. Hence, it is clear that the engagement of the petitioner was not for specific/seasonal work and as such the termination of the services of the petitioner on 16.8.2011 is illegal and unjustified as neither any notice nor compensation as required under section 25-F of the Act was given to the petitioner.

14. The learned counsel of the petitioner also contended that at the time of the termination of the petitioner, the respondents had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the principles of “last come first go”. However, except for the bald statement of the petitioner by way of affidavit Ex. PW-1/A, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondents. The seniority lists mark X and mark Y are mere photocopies and have not been proved in accordance with law as such no credence can be attached to the same. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

Issue no.2.

15. Since I have held under issue no.1 above that the termination of services of the petitioner during the year, 2011 by the respondents without following the provisions of section 25-F of the Act is illegal and unjustified, hence, the petitioner is held entitled to seniority and continuity from the year 2005, when he had completed more than 240 days in that year.

16. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon’ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon’ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

17. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon’ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

18. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No.3.

19. An objection has been taken by the respondent that the forest department is not an industry but this objection does not hold good in view of the law laid down by the ***Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa*** in which it has been held that section 2(j) of the Industrial Disputes Act, 1947 defines industry to mean any business, trade, undertaking, manufacture or calling of employer and includes any calling, service, employment, handicraft or industrial occupation or evocation of workman and as such on the strength of this judgment, it can be safely concluded that the respondents department is an Industry and governed by the Act. Consequently, this issue is answered in negative.

Relief

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. The termination of the petitioner during the year, 2011 without complying with the provisions of the Act is illegal and unjustified and as such the petitioner is held entitled to seniority and continuity from the year 2005, when he had completed more than 240 days. However the petitioner is not entitled to back wages and as such the reference is answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th Day of Jan., 2016.

(Sushil Kukreja),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 79 of 2013.
Instituted on. 22.10.2013.
Decided on 20.1.2016.

Ramesh Chand S/o Shri Ishwar Dass R/o Village Jajahar, P.O Gumma, Tehsil Sunni,
District Shimla, HP.

.....Petitioner.

Vs.

1. The Divisional Forest Officer, Forest Division, Shimla, HP.
2. The Forest Range Officer, Forest Range Sunni, District Shimla, HP.

.....Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether time to time termination of the services of Ramesh Chand S/o Shri Ishwar Dass R/o Village Jajahar, P.O Gumma, Tehsil Sunni, District Shimla, HP by the Divisional Forest Officer, Shimla, District Shimla, HP during the year 2011 without complying with provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that initially he was engaged as daily waged forest worker in Forest Range Bhajji, Sunni, Tehsil & District Shimla w.e.f 1.1.1980 and worked as such till 15th September, 1994 and completed 240 days in one calendar year during the aforesaid period and thereafter his services had been orally terminated on 15.9.1994 in an illegal manner. The petitioner was re-engaged on the direction of this Court on 18.5.2005 and since then he had remained in continuous service till 16.8.2011 when his services had orally been terminated. Then, on 1.1.2012, the petitioner was re-engaged on issuing notice under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the services of the petitioner had been terminated time to time by giving fake and fictional breaks without complying the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner had completed 240 days in preceding twelve months from the date of retrenchment. It is also stated that the respondent engaged juniors to the petitioner, who are still working in the Forest Range, Bhajji out of which Shri Amin Chand, Kamal Chand and Smt. Sunita have been regularized in violation of the principles of “first come last go”. Against this back-drop a prayer has been made for the grant of back wages, seniority and compensation for the period when the petitioner has been given the fake and fictional breaks.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objection had been taken that the respondent department is not an industry. On merits, it has been asserted that as per seniority register of Bhajji Forest Range, the petitioner was initially engaged as casual labourer during the year 1991 and not since 1980. The petitioner had completed 240 days in a calendar year during the period 2006 to 2010 and his services were never terminated as he had not been appointed against any post. The services of the petitioner had been terminated due to non-availability of work as he had been engaged as casual labourer for seasonal forestry works and deployed on work as per seniority and following the principles of “last come first go” and as such the provisions of the Act are not attracted in the case of the petitioner. It is further asserted that the daily wage service of the petitioner were never terminated orally whereas he is still working in Bhajji Forest Range. The department is strictly following the principles of “last come first go” and no junior to the petitioner had been regularized. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties give rise to the following issues which were struck on 23.8.2014.

13. Whether time to time termination of the services of petitioner during the year, 2011 are illegal and unjustified as alleged?

OPP.....

14. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?

OPP.....

15. Whether this Court has no jurisdiction to decide this matter as alleged?

OPR.....

16. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to seniority and continuity but without backwages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issues no.1.

7. The learned counsel for the petitioner contended that since the petitioner had been engaged as daily wage forest worker and had completed 240 working days in each calendar year, his services could not be terminated from time to time without complying with the provisions of the Act. He further contended that the respondent retained the persons junior to the petitioner whose services have been regularized in violation of the principles of "last come first go".

8. On the other hand, learned ADA appearing on behalf of the respondents contended that the petitioner had been engaged as casual labourer to do the seasonal forestry works and on the completion of such work, the services of the petitioner stood automatically terminated and whenever the work is available, casual labours are being engaged as per seniority and after following the principles of "last come first go". He further contended that the petitioner is still working with the respondent, who had not completed 240 working days in each calendar year except the year 2006 to 2010 and no junior to him has been regularized, hence, he is not entitled to any relief as prayed by him.

9. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in examination-in-chief wherein he reiterated almost all the averment as stated in the claim petition. In cross-examination, he denied that he was engaged only for seasonal forestry works whenever the same was available with the department and not throughout the year. He further denied that he had not completed 240 days in any year except in the years 2006 to 2010. He also denied that his services had not been terminated by the respondent but due to un-availability of the

work the same stood automatically terminated. He denied that whenever seasonal work was available, he used to be called by the department for work and the labourers were re-engaged on the basis of seniority and principles of "last come first go". He denied that breaks were given to him due to the unavailability of work and no fictional breaks were given by the department.

10. PW-2 Shri Sohan Lal Jalota, Labour Inspector has stated that the conciliation proceedings were started on 14.11.2011 and continued till 31.12.2012. The conciliation proceedings failed and report under section 12 (4) had been sent to the Labour Commissioner, who referred the matter to this Court.

11. On the contrary, the respondent examined one Shri Krishan Chand, Range Forest Officer, Sunni, who has stated that the petitioner was engaged as casual labourer in the year, 1991 and thereafter he used to come for work casually and worked continuously from 2006 to 2010. The petitioner had completed 240 days in each calendar year from the year 2006 to 2010. Ex. RW-1/A is the mandays chart of the petitioner. He is still working on bill basis with the department and his services were engaged as per need of the work which came to an end on the completion of the work. Only those workers who have completed eight years of service have been regularized as per seniority and government policy and no junior to the petitioner has been regularized. In cross-examination, he expressed his ignorance that the petitioner had filed a reference petition before this Court earlier also in the year, 2003. Though he admitted that initially the petitioner was engaged in the year, 1984 but volunteered that the petitioner had left the job w.e.f. 1986 to 1990. No notice was issued and no compensation was paid to the petitioner before terminating his services. He admitted that S/Shri Nek Ram, Ghan Shyam, Ami Chand and Ms. Sunita were juniors to the petitioner and they are still working with the department and the services of Shri Komal Chand have been regularized as per seniority list. He denied that the petitioner had completed 240 days in preceding twelve calendar months. He also denied that the department had disengaged the petitioner willfully and that he had not been allowed to complete 240 days. He admitted that there is no document with the reply showing that the petitioner was engaged as casual worker. He admitted that Nek Chand was engaged in the year 2006.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was initially engaged by the respondent department in the year, 1984 in which year he had worked for 145 days and 126 days in 1985 and thereafter he had not worked even for a single day from the year 1986 to 1990 as is evident from the mandays chart mark P-2. Its perusal further goes to show that thereafter, the petitioner had worked with the respondent for 88 days in the year 1991, 13 days in 1992, 147 days in 1993 and 30 days in the year, 1994. Thereafter, the petitioner had worked with the respondent for 201 days in the year, 2005, 355 days in the year, 2006, 362 days in 2007, 364 days in 2008, 362 days in 2009, 249 days in 2010 and 151 days in 2011 as is evident from the mandays chart Ex. RW-1/A.

13. As per the claim petition, the services of the petitioner were terminated on 15th September, 1994 and on the direction of this Court, he was re-engaged on 18.5.2005 and thereafter he continued as such till 16.8.2011 and his services had been terminated only once in the year, 2011 i.e w.e.f. 16.8.2011 and thereafter he was re-engaged by the respondent after issuing a notice under section 2-A of the Act on 1.1.2012 and is still working with the respondent. This fact has not been specifically denied by the respondent. Therefore, it is clear that the services of the petitioner were terminated only once during the year, 2011. Now, the next question which arises for consideration before this Court is that as to whether the termination of the services of the petitioner during the year, 2011 is illegal and unjustified. It is the admitted case of the parties that the petitioner had completed 240 working days from the years 2006 to 2010 and thereafter his services had been terminated without any prior notice as required under section 25-F of the Act. To this effect, the case of the respondent is that the petitioner was engaged as casual labourer for seasonal work, who

used to come for work casually. But when regard is given to the mandays chart Ex. RW-1/A, it is abundantly clear that the petitioner had worked for more than 240 days i.e 355 days in 2006, 362 days in 2007, 364 days in 2008, 362 days in 2009 and 249 days in 2010. Since, the petitioner had completed more than 240 days in the years 2006 to 2010 as per mandays chart Ex. RW-1/A, it cannot be said that the petitioner was engaged for specific/seasonal work as alleged by the respondents. Moreover, the respondents have failed to produce on record any document which could go to show that the petitioner was engaged for seasonal work. It was incumbent upon the respondents to have disclosed to the petitioner that he had been engaged for specific work but the same is missing in the present case. Hence, it is clear that the engagement of the petitioner was not for specific/seasonal work and as such the termination of the services of the petitioner on 16.8.2011 is illegal and unjustified as neither any notice nor compensation as required under section 25-F of the Act was given to the petitioner.

14. The learned counsel of the petitioner also contended that at the time of the termination of the petitioner, the respondents had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the principles of “last come first go”. As far as the seniority lists mark X and mark Y are concerned these are mere photocopies and not have been proved in accordance with law as such no credence can be attached to the same. However, it has been admitted by RW-1 Shri Krishan Chauhan, that S/Shri Nek Ram, Ghan Shyam, Ami Chand, Komal Chand and Ms. Sunita were juniors to the petitioner and they are still working with the department and the services of Shri Komal Chand have been regularized as per seniority. Thus, from the evidence, on record, it has been proved that juniors to the petitioner have been retained by the respondents department while terminating him which is clear cut violation of the provisions of section 25-G of the Act. ***In CWP No. 555 of 2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. , the Hon’ble High Court of Himachal Pradesh has held as under:***

“.....Since the persons junior to the workman have been retained while retrenching him, he was entitled to get protection under section 25-G of the Act even though he had not completed 240 days preceding a block 12 calendar months at the time of his retrenchment”.

15. Thus, having regard to entire evidence on record and in view of above cited rulings, I have no hesitation in coming to the conclusion that the termination of services of the petitioner by the respondent during the year, 2011 without complying with the provisions of the Act is improper and unjustified and thus the respondents violated the provisions of sections 25-F and 25-G of the Act. Accordingly, issue no.1 is decided in affirmative.

Issue no.2.

16. Since I have held under issue no.1 above that the termination of services of the petitioner during the year, 2011 by the respondents without following the provisions of section 25-F of the Act is illegal and unjustified, hence, the petitioner is held entitled to seniority and continuity from the year 2006, when he had completed more than 240 days in that year.

17. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon’ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon’ble Supreme Court in**

2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

18. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to backwages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

19. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondents.

Issue No.3.

20. An objection has been taken by the respondent that the forest department is not an industry but this objection does not hold good in view of the law laid down by the **Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa** in which it has been held that section 2(j) of the Industrial Disputes Act, 1947 defines industry to mean any business, trade, undertaking, manufacture or calling of employer and includes any calling, service, employment, handicraft or industrial occupation or evocation of workman and as such on the strength of this judgment, it can be safely concluded that the respondent department is an Industry and governed by the Act. Consequently, this issue is answered in negative.

Relief

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. The termination of the petitioner during the year, 2011 without complying with the provisions of the Act is illegal and unjustified and as such the petitioner is held entitled to seniority and continuity from the year 2006, when he had completed more than 240 days. However the petitioner is not entitled to back wages and as such the reference is answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th Day of Jan., 2016.

(Sushil Kukreja),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 80 of 2013.

Instituted on. 22.10.2013.

Decided on 20.1.2016.

Dhayan Singh S/o Shri Sewa Nand R/o Village Jander, P.O Basnatpur, Tehsil Sunni, District Shimla, HP.

.....Petitioner.

Vs.

1. The Divisional Forest Officer, Forest Division, Shimla, HP.
2. The Forest Range Officer, Forest Range Sunni, District Shimla, HP.

.....Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether time to time termination of the services of Shri Dhayan Singh S/o Shri Sewa Nand R/o Village Jander, P.O Basnatpur, Tehsil Sunni, District Shimla, HP by the Divisional Forest Officer, Shimla, District Shimla, HP during the year 2011 without complying with provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that initially he was engaged as daily waged forest worker in Forest Range Bhajji, Sunni, Tehsil & District Shimla on 1.1.1984 and worked as such till 16.8.2011. The petitioner had completed 240 days in one calendar year during the period 1984 to 2011 and his services had been orally terminated on 16.8.2011 in an illegal manner. Then, on 1.1.2012, the petitioner was re-engaged on issuing notice under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the services of the petitioner had been terminated time to time by giving fake and fictional breaks without complying the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner had completed 240 days preceding twelve months from the date of retrenchment. It is also stated that the respondent engaged juniors to the petitioner, who are still working in the Forest Range, Bhajji out of which Shri Amin Chand, Kamal Chand and Smt. Sunita have been regularized in violation of principles of “first come last go”. Against this back-drop a prayer has been made for the grant of back wages, seniority and compensation for the period when the petitioner has been given the fake and fictional breaks.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objection has been taken that the respondent department is not an industry. On merits, it has been asserted that as per seniority register of Bhajji Forest Range, the petitioner was initially engaged as casual labourer during 1996 and not since 1984. The petitioner had completed 240 days

in a calendar year during the period 2006 to 2010 and his services were never terminated as he had not been appointed against any post. The services of the petitioner had been terminated due to non-availability of work as he had been engaged as casual labourer for seasonal forestry works and deployed on work as per seniority and following the principles of “last come first go” and as such the provisions of the Act are not attracted in the case of the petitioner. It is further asserted that the daily wage services of the petitioner were never terminated orally whereas he is still working in Bhajji Forest Range. The department is strictly following the principles of “last come first go” and no junior to the petitioner had been regularized. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties give rise to the following issues which were struck on 23.8.2014.

17. Whether time to time termination of the services of petitioner during the year, 2011 are illegal and unjustified as alleged?

OPP.....

18. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?

OPP.....

19. Whether this Court has no jurisdiction to decide this matter as alleged?

OPR.....

20. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to seniority and continuity but without backwages.
Issue no.3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issues no.1.

7. The learned counsel for the petitioner contended that since the petitioner had been engaged as daily wage forest worker and had completed 240 working days in each calendar year, his services could not be terminated from time to time without complying with the provisions of the Act. He further contended that the respondent retained the persons junior to the petitioner whose services have been regularized in violation of the principles of “last come first go”.

8. On the other hand, learned ADA appearing on behalf of the respondents contended that the petitioner had been engaged as casual labourer to do the seasonal forestry works and on the completion of such work, the services of the petitioner stood automatically terminated and whenever the work is available, casual labours are being engaged as per seniority and after following the principles of “last come first go”. He further contended that the petitioner is still

working with the respondent, who had not completed 240 working days in each calendar year except the year 2006 to 2010 and no junior to him has been regularized, hence, he is not entitled to any relief as prayed by him.

9. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in examination-in-chief wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he denied that he was engaged only for seasonal forestry work whenever the same was available with the department and not throughout the year. He further denied that he had not completed 240 days in any year except in the years 2006 to 2010. He also denied that his services had not been terminated by the respondent but due to un-availability of the work the same stood automatically terminated. He denied that whenever seasonal work was available, he used to be called by the department for work and the labourers were re-engaged on the basis of seniority and principles of “last come first go”. He denied that breaks were given to him due to the unavailability of work and no fictional breaks were given by the department.

10. PW-2 Shri Sohan Lal Jalota, Labour Inspector has stated that the conciliation proceedings were started on 14.11.2011 and continued till 31.12.2012. The conciliation proceedings failed and report under section 12 (4) had been sent to the Labour Commissioner, who referred the matter to this Court.

11. On the contrary, the respondent examined one Shri Krishan Chand, Range Forest Officer, Sunni, who has stated that the petitioner was engaged as casual labourer in the year, 1996 and thereafter he used to come for work casually and worked continuously from 2006 to 2010. The petitioner had completed 240 days in each calendar year from the year 2006 to 2010. Ex. RW-1/A is the mandays chart of the petitioner. He is still working on bill basis with the department and his services were engaged as per need of the work which came to an end on the completion of the work. Only those workers who have completed eight years of service have been regularized as per seniority and government policy and no junior to the petitioner has been regularized. In cross-examination, he admitted that the petitioner was engaged in the year, 1996. No notice was issued and no compensation was paid to the petitioner before terminating his services. He admitted that no appointment letter had been issued to the petitioner regarding his engagement as casual labourer. He admitted that seniority list mark X and mark Y had been issued by the department. He denied that the petitioner was engaged on daily wage basis. He further denied that S/Shri Nek Ram, Ghan Shyam, Ami Chand, Komal Chand and Ms. Sunita were junior to the petitioner and they are still working with the department. He denied that the petitioner had completed 240 working days in preceding twelve calendar months. He also denied that the department had disengaged the petitioner willfully and that he had not been allowed to complete 240 days. He admitted that there is no document with the reply showing that the petitioner was engaged as casual worker.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent from the year 1996. The perusal of mandays chart Ex. RW-1/A shows that the petitioner had worked for 224 days in the year 1998, 157 days in 1999, 164 days in 2005, 339 days in 2006, 363 days in 2007, 353 days in 2008, 362 days in 2009, 256 days in 2010 and 121 days in 2011. No doubt, the petitioner had tried to establish on record that he was engaged in the year, 1984 but at the same time he has failed to produce any documentary evidence to show that he had been engaged by the respondent in the year 1984. It has been admitted by RW-1 Shri Krishan Chand in his cross-examination that the petitioner was engaged in the year 1996. Except for the bald statement of the petitioner, there is nothing on record which could go to show that initially the petitioner was engaged in the year, 1984. Therefore, I have no hesitation in holding that the petitioner was engaged by the respondent in the year, 1996 and not in the year 1984 as stated by the petitioner.

13. As per the claim petition, the services of the petitioner were terminated on 16.8.2011 i.e only once during the year, 2011 and thereafter he was re-engaged by the respondent after issuing a notice under section 2-A of the Act on 1.1.2012 and is still working with the respondent. This fact has not been specifically denied by the respondent. Therefore, it is clear that the services of the petitioner were terminated only once during the year, 2011. Now, the next question which arises for consideration before this Court is that as to whether the termination of the services of the petitioner during the year, 2011 is illegal and unjustified. It is the admitted case of the parties that the petitioner had completed 240 working days from the years 2006 to 2010 and thereafter his services had been terminated without any prior notice as required under section 25-F of the Act. To this effect, the case of the respondent is that the petitioner was engaged as casual labourer for seasonal work, who used to come for work casually. But when regard is given to the mandays chart Ex. RW-1/A, it is abundantly clear that the petitioner had worked for more than 240 days i.e 339 days in 2006, 363 days in 2007, 353 days in 2008, 362 days in 2009 and 256 days in 2010. Since, the petitioner had completed more than 240 days in the years 2006 to 2010 as per mandays chart Ex. RW-1/A, it cannot be said that the petitioner was engaged for specific/seasonal work as alleged by the respondent. Moreover, the respondents have failed to produce on record any document which could go to show that the petitioner was engaged for seasonal work. It was incumbent upon the respondents to have disclosed to the petitioner that he had been engaged for specific work but the same is missing in the present case. Hence, it is clear that the engagement of the petitioner was not for specific/seasonal work and as such the termination of the services of the petitioner on 16.8.2011 is illegal and unjustified as neither any notice nor compensation as required under section 25-F of the Act was given to the petitioner.

14. The learned counsel of the petitioner also contended that at the time of the termination of the petitioner, the respondents had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the principles of "last come first go". However, except for the bald statement of the petitioner by way of affidavit Ex. PW-1/A, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondents. The seniority lists mark X and mark Y are mere photocopies and have not been proved in accordance with law as such no credence can be attached to the same. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

Issue no.2.

15. Since I have held under issue no.1 above that the termination of services of the petitioner during the year, 2011 by the respondent without following the provisions of section 25-F of the Act is illegal and unjustified, hence, the petitioner is held entitled to seniority and continuity from the year 2006, when he had completed more than 240 days in that year.

16. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

17. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to backwages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

18. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No.3.

19. An objection has been taken by the respondents that the forest department is not an industry but this objection does not hold good in view of the law laid down by the **Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa** in which it has been held that section 2(j) of the Industrial Disputes Act, 1947 defines industry to mean any business, trade, undertaking, manufacture or calling of employer and includes any calling, service, employment, handicraft or industrial occupation or evocation of workman and as such on the strength of this judgment, it can be safely concluded that the respondent department is an Industry and governed by the Act. Consequently, this issue is answered in negative.

Relief

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. The termination of the petitioner during the year, 2011 without complying with the provisions of the Act is illegal and unjustified and as such the petitioner is held entitled to seniority and continuity from the year 2006, when he had completed more than 240 days. However the petitioner is not entitled to back wages and as such the reference is answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th Day of Jan., 2016.

(Sushil Kukreja),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNALCUM- LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 81 of 2013.
Instituted on. 22.10.2013.
Decided on 20.1.2016.

Tej Ram S/o Shri Lumcha Ram R/o Village Sumvi, P.O Juni, Tehsil Sunni, District Shimla,
HP.
.....Petitioner.

Vs.

1. The Divisional Forest Officer, Forest Division, Shimla, HP.
2. The Forest Range Officer, Forest Range Sunni, District Shimla, HP.

.....Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether time to time termination of the services of Shri Tej Ram S/o Shri Lumcha Ram R/o Village Sumvi P.O Juni, Tehsil Sunni District Shimla HP by Divisional Forest Officer, Shimla, District Shimla, HP during the year 2011 without complying with provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that initially he was engaged as daily waged forest worker in Forest Range Bhajji, Sunni, Tehsil & District Shimla since, 1983 and worked as such till 1998. The petitioner had completed 240 days in one calendar year during the period 1983 to 2004 and his services had been orally terminated in the year, 2005 in an illegal manner and he was re-engaged vide order dated 29.9.2005 passed by the Administrative Tribunal in OA No. 242 of 2005 wherein the respondents were directed not to give fictional breaks but the department in utter violation of the orders passed by the Administrative Tribunal has terminated the services of the petitioner on 16.8.2011. Then, on 1.1.2012, the petitioner was re-engaged on issuing notice under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the services of the petitioner had been terminated time to time by giving fake and fictional breaks without complying with the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner had completed 240 days preceding twelve months from the date of retrenchment. It is also stated that the respondent engaged juniors to the petitioner, who are still working in the Forest Range, Bhajji out of which Shri Amin Chand, Kamal Chand and Smt. Sunita have been regularized in violation of the principles of “first come last go”. Against this back-drop a prayer has been made for the grant of back wages, seniority and compensation for the period when the petitioner has been given the fake and fictional breaks.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objection has been taken that the respondent department is not an industry. On merits, it has been asserted that as per seniority register of Bhajji Forest Range, the petitioner was initially engaged as casual labourer during 1997 and not since 1983. The petitioner had completed 240 days in a calendar year during the period 2006 to 2010 and his services were never terminated as he had not been appointed against any post. The services of the petitioner had been terminated due to non-availability of work as he had been engaged as casual labourer for seasonal forestry works and deployed on work as per seniority and following the principles of “last come first go” and as such the provisions of the Act are not attracted in the case of the petitioner. It is further asserted that the daily wage service of the petitioner were never terminated orally whereas he is still working in Bhajji Forest Range. The department is strictly following the principles of “last come first go” and no junior to the petitioner had been regularized. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties give rise to the following issues which were struck on 23.8.2014.

21. Whether time to time termination of the services of petitioner during the year, 2011 are illegal and unjustified as alleged?

OPP.....

22. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?

OPP.....

23. Whether this Court has no jurisdiction to decide this matter as alleged?

OPR.....

24. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to seniority and continuity but without backwages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issues no.1.

7. The learned counsel for the petitioner contended that since the petitioner had been engaged as daily wage forest worker and had completed 240 working days in each calendar year, his services could not be terminated from time to time without complying with the provisions of the Act. He further contended that the respondent retained the persons junior to the petitioner whose services have been regularized in violation of the principles of “last come first go”.

8. On the other hand, learned ADA appearing on behalf of the respondents contended that the petitioner had been engaged as casual labourer to do the seasonal forestry works and on the completion of such work, the services of the petitioner stood automatically terminated and whenever the work is available, casual labours are being engaged as per seniority and after following the principles of "last come first go". He further contended that the petitioner is still working with the respondent, who had not completed 240 working days in each calendar year except the year 2006 to 2010 and no junior to him has been regularized, hence, he is not entitled to any relief as prayed by him.

9. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in examination-in-chief wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he denied that he was engaged only for seasonal forestry work whenever the same was available with the department and not throughout the year. He further denied that he had not completed 240 days in any year except in the years 2006 to 2010. He also denied that his services had not been terminated by the respondent but due to un-availability of the work the same stood automatically terminated. He denied that whenever seasonal work was available, he used to be called by the department for work and the labourers were re-engaged on the basis of seniority and principles of "last come first go". He denied that breaks were given to him due to the unavailability of work and no fictional breaks were given by the department.

10. PW-2 Shri Sohan Lal Jalota, Labour Inspector has stated that the conciliation proceedings were started on 14.11.2011 and continued till 31.12.2012. The conciliation proceedings failed and report under section 12 (4) had been sent to the Labour Commissioner, who referred the matter to this Court.

11. On the contrary, the respondent examined one Shri Krishan Chand, Range Forest Officer, Sunni, who has stated that the petitioner was engaged as casual labourer in the year, 1997 and thereafter he used to come for work casually and worked continuously from 2006 to 2010. The petitioner had completed 240 days in each calendar year from the year 2006 to 2010. Ex. RW-1/A is the mandays chart of the petitioner. He is still working on bill basis with the department and his services were engaged as per need of the work which came to an end on the completion of the work. Only those workers who have completed eight years of service have been regularized as per seniority and government policy and no junior to the petitioner has been regularized. In cross-examination, he admitted that the petitioner was engaged in the year, 1996. No notice was issued and no compensation was paid to the petitioner before terminating his services. He admitted that no appointment letter had been issued to the petitioner regarding his engagement as casual labourer. He admitted that seniority list mark X and mark Y had been issued by the department. He denied that the petitioner was engaged on daily wage basis. He further denied that S/Shri Nek Ram, Ghan Shyam, Ami Chand, Komal Chand and Ms. Sunita were juniors to the petitioner and they are still working with the department. He denied that the petitioner had completed 240 working days in preceding twelve calendar months. He also denied that the department had disengaged the petitioner willfully and that he had not been allowed to complete 240 days. He admitted that there is no document with the reply showing that the petitioner was engaged as casual worker.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent from the year 1996. The perusal of mandays chart Ex. RW-1/A shows that the petitioner had worked for 34 days in the year 1998, 11 days in 1999, 33 days in 2004, 182 days in 2005, 320 days in 2006, 357 days in 2007, 264 days in 2008, 348 days in 2009, 256 days in 2010 and 120 days in 2011. It is also clear from the mandays chart Ex. RW-1/A that the petitioner had not worked even for a single day from the year 2000 to 2003. No doubt, the petitioner had tried to establish on record that he was engaged in the year, 1983 but at the same time he has failed to produce any documentary evidence to show

that he had been engaged by the respondent in the year 1983. It has been admitted by RW-1 Shri Krishan Chand in his cross-examination that the petitioner was engaged in the year 1996. Except for the bald statement of the petitioner, there is nothing on record which could go to show that initially the petitioner was engaged in the year, 1983. Therefore, I have no hesitation in holding that the petitioner was engaged by the respondent in the year, 1996 and not in the year 1983 as stated by the petitioner.

13. As per the claim petition, the services of the petitioner were terminated on 16.8.2011 i.e only once during the year, 2011 and thereafter he was re-engaged by the respondent after issuing a notice under section 2-A of the Act on 1.1.2012 and is still working with the respondent. This fact has not been specifically denied by the respondent. Therefore, it is clear that the services of the petitioner were terminated only once during the year, 2011. Now, the next question which arises for consideration before this Court is that as to whether the termination of the services of the petitioner during the year, 2011 is illegal and unjustified. It is the admitted case of the parties that the petitioner had completed 240 working days from the years 2006 to 2010 and thereafter his services had been terminated without any prior notice as required under section 25-F of the Act. To this effect, the case of the respondent is that the petitioner was engaged as casual labourer for seasonal work, who used to come for work casually. But when regard is given to the mandays chart Ex. RW-1/A, it is abundantly clear that the petitioner had worked for more than 240 days i.e 320 days in 2006, 357 days in 2007, 264 days in 2008, 348 days in 2009 and 256 days in 2010. Since, the petitioner had completed more than 240 days in the years 2006 to 2010 as per mandays chart Ex. RW-1/A, it cannot be said that the petitioner was engaged for specific/seasonal work as alleged by the respondent. Moreover, the respondent has failed to produce on record any document which could go to show that the petitioner was engaged for seasonal work. It was incumbent upon the respondent to have disclosed to the petitioner that he had been engaged for specific work but the same is missing in the present case. Hence, it is clear that the engagement of the petitioner was not for specific/seasonal work and as such the termination of the services of the petitioner on 16.8.2011 is illegal and unjustified as neither any notice nor compensation as required under section 25-F of the Act was given to the petitioner.

14. The learned counsel of the petitioner also contended that at the time of the termination of the petitioner, the respondents had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the principles of "last come first go". However, except for the bald statement of the petitioner by way of affidavit Ex. PW-1/A, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondents. The seniority lists mark X and mark Y are mere photocopies and have not been proved in accordance with law as such no credence can be attached to the same. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

Issue no.2.

15. Since I have held under issue no.1 above that the termination of services of the petitioner during the year, 2011 by the respondents without following the provisions of section 25-F of the Act is illegal and unjustified, hence, the petitioner is held entitled to seniority and continuity from the year 2006, when he had completed more than 240 days in that year.

16. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an

employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

17. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to backwages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

18. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondents.

Issue No.3.

19. An objection has been taken by the respondents that the forest department is not an industry but this objection does not hold good in view of the law laid down by the **Constitutional Bench of Hon'ble Supreme Court, in 1978 (2) SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa** in which it has been held that section 2(j) of the Industrial Disputes Act, 1947 defines industry to mean any business, trade, undertaking, manufacture or calling of employer and includes any calling, service, employment, handicraft or industrial occupation or evocation of workman and as such on the strength of this judgment, it can be safely concluded that the respondent department is an Industry and governed by the Act. Consequently, this issue is answered in negative.

Relief

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. The termination of the petitioner during the year, 2011 without complying with the provisions of the Act is illegal and unjustified and as such the petitioner is held entitled to seniority and continuity from the year 2006, when he had completed more than 240 days. However the petitioner is not entitled to back wages and as such the reference is answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 20th Day of Jan., 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

उद्योग विभाग

अधिसूचना

शिमला-2, 5 मार्च, 2016

संख्या:इण्ड-II(बी)2-8/2006-I.—हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद-309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, उद्योग विभाग, हिमाचल प्रदेश में **विकास अधिकारी, (रेशम उत्पादन) वर्ग-III** (अराजपत्रित) के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध-‘क’ के अनुसार भर्ती और प्रोन्नति नियम बनते हैं, अर्थात्:—

1. **संक्षिप्त नाम और प्रारम्भ.**—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश उद्योग विभाग, विकास अधिकारी, (रेशम उत्पादन) वर्ग-III (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2016 है।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशन की तारीख से प्रवृत्त होंगे।

2. **निरसन और व्यावृत्तियां:**— (1) इस विभाग की अधिसूचना संख्या: इण्ड-II(बी)2-8/2006 तारीख 20-7-2007 द्वारा अधिसूचित हिमाचल प्रदेश उद्योग विभाग विकास अधिकारी, (रेशम उत्पादन) वर्ग-III (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2007 का एतद् द्वारा निरसन किया जाता है।

2. ऐसे निरसन के होते हुए भी उपर्युक्त उप-नियम (1) के अधीन इस प्रकार निरसित नियमों के अधीन की गई कोई नियुक्ति, बात या कार्रवाई इन नियमों के अधीन विधिमाम्य रूप में की गई समझी जाएगी।

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव (उद्योग)।

उपाबन्ध ‘क’

उद्योग विभाग, हिमाचल प्रदेश में विकास अधिकारी (रेशम उत्पादन) वर्ग-III (अराजपत्रित) के पद के लिए भर्ती एवं प्रोन्नति नियम

1. **पद का नाम:**—विकास अधिकारी (रेशम उत्पादन)

2. **पद (पदों) की संख्या:**—07 (सात)

3. **वर्गीकरण:**—वर्ग-III (अराजपत्रित)

4. **वेतनमान:**—1. नियमित पदधारियों के लिए वेतनमान :
पे बैंड ₹10300-34800 जमा ₹3800/- ग्रेड पे।

2. संविदा पर नियुक्त कर्मचारियों के लिए उपलब्धियाँ
स्तम्भ 15-क में दिए गए ब्यौरे के अनुसार ₹14100/- प्रति मास।

5. **चयन पद अथवा अचयन पद:**—चयन।

6. सीधी भर्ती के लिए आयु:—18 से 45 वर्ष:

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्त किए गए व्यक्तियों सहित पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी:

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी, इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो तो वह तदर्थ या संविदा के आधार पर नियुक्ति के कारण विहित आयु में छूट के लिए पात्र नहीं होगा;

परन्तु यह और कि अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य प्रवर्गों के व्यक्तियों के लिए ऊपरी आयु सीमा में उतनी ही छूट दी जा सकेगी जितनी हिमाचल प्रदेश सरकार के साधारण या विशेष आदेश (आदेशों) के अधीन अनुज्ञेय है;

परन्तु यह और भी कि समस्त पब्लिक सैक्टर निगमों तथा स्वायत्त निकायों के कर्मचारियों को, जो ऐसे पब्लिक सैक्टर निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सैक्टर निगमों/स्वायत्त निकायों में आमेलन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती में आयु की सीमा में ऐसी ही रियायत दी जाएगी जैसी सरकारी कर्मचारियों को अनुज्ञेय है, किन्तु इस प्रकार की रियायत पब्लिक सैक्टर निगमों/स्वायत्त निकायों के ऐसे कर्मचारिवृन्द को, नहीं दी जाएगी जो पश्चातवर्ती ऐसे पब्लिक सैक्टर निगमों/स्वायत्त निकायों द्वारा नियुक्त किए गए थे/किए गए हैं और उन पब्लिक सैक्टर निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात् ऐसे निगमों/स्वायत्त निकायों की सेवा में अन्तिम रूप से आमेलित किए गए हैं/किए गए थे।

टिप्पणी:

- (1) सीधी भर्ती के लिए आयु सीमा की गणना,, उस वर्ष के प्रथम दिवस से की जाएगी जिसमें कि पद (पदों) को आवेदन आमंत्रित करने के लिए यथास्थिति, विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है।
- (2) अन्यथा सुअर्हित अभ्यर्थियों की दशा में सीधी भर्ती के लिए आयु सीमा और अनुभव, हिमाचल प्रदेश लोक सेवा आयोग के विवेकानुसार शिथिल किया जा सकेगा।

7. सीधे भर्ती किए जाने वाले व्यक्ति (व्यक्तियों) के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं:—(क) अनिवार्य योग्यताएं:—(1) किसी मान्यता प्राप्त विश्वविद्यालय से बी०ए०सी० (कृषि) या जीव विज्ञान/वनस्पति विज्ञान में बी०ए०सी० की उपाधि।

(2) उपाधि प्राप्त करने के पश्चात रेशम संगठन में रेशम संक्रिया का कम से कम पांच वर्ष का अनुभव।

(ख) वांछनीय अर्हता(ए):—हिमाचल प्रदेश के रुढ़ियों, रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता।

8. सीधे भर्ती किए जाने वाले व्यक्ति (व्यक्तियों) के लिए विहित आयु और शैक्षिक अहर्ता (अहर्ताएं) प्रोन्नत व्यक्ति (व्यक्तियों) की दशा में लागू होगी या नहीं:— आयु:—लागू नहीं।

शैक्षिक अहर्ता :—लागू नहीं।

9. परिवीक्षा की अवधि, यदि कोई हो:—दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और लिखित कारणों से आदेश दें।

10. **भर्ती की पद्धति:**—भर्ती सीधी होगी या प्रोन्नति, सैकन्डमैंट या स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पद (पदों) की प्रतिशतता:—शतप्रतिशत प्रोन्नति द्वारा, ऐसा न होने पर सीधी भर्ती द्वारा यथास्थिति नियमित आधार पर या संविदा के आधार भर्ती द्वारा ।

11. **प्रोन्नति, सैकन्डमैंट, स्थानान्तरण द्वारा भर्ती की दशा में, वे श्रेणियां (ग्रेड) जिनसे प्रोन्नति/सैकन्डमैंट/स्थानान्तरण किया जाएगा:**—मलबरी अधीक्षकों/अनुसन्धान सहायकों/वरिष्ठ रेशम उत्पादन निरीक्षकों/तकनीकी पर्यवेक्षकों में से प्रोन्नति द्वारा जिनका तीन वर्ष का नियमित सेवाकाल या ग्रेड में की गई लगातार तदर्थ सेवा, यदि कोई हो,, को सम्मिलित करके तीन वर्ष का नियमित सेवाकाल हो ।

प्रोन्नति के प्रयोजन के लिए सम्भरक (पोषक) प्रवर्गों की उनके सेवाकाल के आधार पर उनकी पारस्परिक वरिष्ठता को छोड़े बिना एक संयुक्त वरिष्ठता सूची तैयार की जायेगी:

प्रोन्नति के प्रयोजन के लिए प्रत्येक कर्मचारी को, जन-जातीय/दुर्गम क्षेत्रों में पद (पदों) की ऐसे क्षेत्रों में पर्याप्त संख्या की उपलब्धता के अध्वीन, कम से कम एक कार्यकाल तक सेवा करनी होगी:

परन्तु यह और कि उपर्युक्त परन्तुक उन कर्मचारियों के मामले में लागू नहीं होगी जिनकी अधिवर्षिता के लिए पांच वर्ष या उससे कम की सेवा शेष रही हो:

परन्तु यह और भी कि उन अधिकारियों/कर्मचारियों का जिन्होंने जनजातीय/दुर्गम क्षेत्र में कम से कम एक कार्यकाल तक सेवा नहीं की है, ऐसे क्षेत्र में उसके अपने संवर्ग (काडर) में सर्वथा वरिष्ठता के अनुसार स्थानान्तरण किया जाएगा ।

स्पष्टीकरण-1:—उपर्युक्त परन्तुक (1) के प्रयोजन के लिए जन-जातीय/दुर्गम क्षेत्रों में कार्यकाल से साधारणतया तीन वर्ष की अवधि या प्रशासनिक अपेक्षाओं और कर्मचारी द्वारा किए गए कार्य को ध्यान में रखते हुए ऐसे क्षेत्रों में तैनाती की इससे कम अवधि अभिप्रेत होगी ।

स्पष्टीकरण-11:—उपर्युक्त परन्तुक (1) के प्रयोजन के लिए जन-जातीय/दुर्गम क्षेत्र निम्न प्रकार से होंगे:—

1. जिला लाहौल एवं स्पिति ।
2. जिला चम्बा का पांगी और भरमौर उप मण्डल ।
3. रोहडू उप मण्डल का डोडरा कवार क्षेत्र ।
4. जिला शिमला की रामपुर तहसील का पन्द्रह बीस परगना, मुनीष दरकली और ग्राम पंचायत काशापट ।
5. जिला कुल्लू का पन्द्रह बीस परगना ।
6. जिला कांगड़ा के बैजनाथ उप मण्डल का बड़ा भंगाल क्षेत्र ।
7. जिला किन्नौर ।
8. जिला सिरमौर में उप तहसील कामराउ के काठवाड़ और केरगा पटवार वृत्त, रेनुकाजी तहसील के भलाड़-भलौना और सांगना पटवार वृत्त और शिलाई तहसील के कोटा पाब पटवार वृत्त ।
जिला मण्डी में करसोग तहसील का खन्यो-बगड़ा पटवार वृत्त, बाली चौकी उप तहसील के गाडा गोसाई, मथयानी, घनयाड़, थाची, वागी, सोमगाड़ और खोलानाल, पद्धर तहसील के झारवाड़, कुटगढ़, ग्रामन, देवहगढ़, ट्रैला, रोपा, कथोग, सिल्ह-भडवानी, हस्तपुर, घमरेड और

भटेड़ पटवार वृत्त, थुनाग तहसील के चियुनी, कालीपार, मानगढ़, थाच बगड़ा, ऊपनी मगरू और दक्षिणी मगरू पटवार वृत्त और सुन्दरनगर तहसील का पटवाड़ा पटवार वृत्त।

(1) प्रोन्नति के सभी मामलों में पद नियमित नियुक्ति से पूर्व सम्भरक (पोषक) पद में की गई लगातार तदर्थ सेवा, यदि कोई हो, प्रोन्नति के लिए इन नियमों में यथाविहित सेवाकाल के लिए, इस शर्त के अधीन रहते हुए गणना में ली जायेगी कि सम्भरक (पोषक) प्रवर्ग में तदर्थ नियुक्ति/प्रोन्नति/भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार चयन की उचित स्वीकार्य प्रक्रिया को अपनाने के पश्चात् की गई थी:

परन्तु उन सभी मामलों में जिनमें कोई कनिष्ठ व्यक्ति सम्भरक (पोषक) पद में अपने कुल सेवाकाल (तदर्थ आधार पर की गई तदर्थ सेवा सहित, जो नियमित सेवा/नियुक्ति के अनुसरण में हो) के आधार पर उपर्युक्त निर्दिष्ट उपबन्धों के कारण विचार किए जाने का पात्र हो जाता है, वहां अपने-अपने प्रवर्ग/पद/कांडर में उससे वरिष्ठ सभी व्यक्ति विचार किए जाने के पात्र समझे जायेंगे और विचार करते समय सभी कनिष्ठ व्यक्ति से उपर रखे जायेंगे।

परन्तु यह और कि उन सभी पदधारियों की, जिन पर प्रोन्नति के लिए विचार किया जाना है, कम से कम तीन वर्ष की न्यूनतम अर्हता सेवा या पद के भर्ती एवम् प्रोन्नति नियमों में विहित सेवा, जो भी कम हो, होगी:

परन्तु यह और भी कि जहां कोई व्यक्ति पूर्वगामी परन्तुक की अपेक्षाओं के कारण प्रोन्नति किये जाने सम्बन्धी विचार के लिए अपात्र हो जाता है, वहां उससे कनिष्ठ व्यक्ति भी ऐसी प्रोन्नति के विचार के लिए अपात्र समझा/समझे जायेंगे।

स्पष्टीकरण:—अन्तिम परन्तुक के अन्तर्गत कनिष्ठ पदधारी प्रोन्नति के लिए अपात्र नहीं समझा जाएगा। यदि वरिष्ठ अपात्र व्यक्ति भूतपूर्व सैनिक जिसे डिमोबिलाईज्ड आर्मड फोर्सिज परसोनल (रिजर्वेशन आफ बैकेन्सीज इन हिमाचल स्टेट नान टैक्नीकल सर्विसीज) रूलज 1972 के नियम-3 के उपबन्धों के अन्तर्गत भर्ती किया गया है और इनके अन्तर्गत वरीयता लाभ दिए गये हों या जिसे एक्स-सर्विसमैन (रिजर्वेशन आफ बैकेन्सीज इन दी हिमाचल प्रदेश टैक्नीकल सर्विसीज) रूलज, 1985 के नियम-3 के उपबन्धों के अन्तर्गत भर्ती किया गया हो और इनके अन्तर्गत वरीयता लाभ दिए गये हों।

(2) इसी प्रकार स्थायीकरण के सभी मामलों में ऐसे पद पर नियमित नियुक्ति/प्रोन्नति से पूर्व की सम्भरक (पोषक) पद पर की गई लगातार तदर्थ सेवा, यदि कोई हो, सेवाकाल के लिए गणना में ली जाएगी, यदि तदर्थ नियुक्ति/प्रोन्नति उचित चयन के पश्चात् भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार की गई थी:

परन्तु की गई उपर्युक्त निर्दिष्ट तदर्थ सेवा को गणना में लेने के पश्चात् जो स्थाईकरण होगा उसके फलस्वरूप, पारस्परिक वरीयता अपरिवर्तित रहेगी।

12. यदि विभागीय प्रोन्नति समिति विद्यमान हो, तो उसकी संरचना:—जैसी सरकार द्वारा समय-समय पर गठित की जाए।

13. भर्ती करने में, जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जाएगा:— जैसा विधि द्वारा अपेक्षित हो।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा:—किसी सेवा या पद पर नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना अनिवार्य है।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन:—सीधी भर्ती के मामले में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा। यदि यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती प्राधिकरण ऐसा करना आवश्यक या समीचीन समझे, तो लिखित परीक्षा या

व्यवहारिक परीक्षा के आधार पर किया जाएगा जिसका स्तर/पाठ्यक्रम इत्यादि, यथास्थिति, आयोग/अन्य भर्ती प्राधिकरण द्वारा अवधारित किया जाएगा ।

15.(क) (क) संविदा के आधार नियुक्ति के लिए चयन:—इन नियमों में किसी बात के होते हुए भी, पर पद संविदा नियुक्तियों नीचे दिए निबन्धनों और शर्तों के अधीन की जायेगी:—

(1) संकल्पना:—(क) इस पॉलिसी के अधीन उद्योग विभाग हिमाचल प्रदेश में विकास अधिकारी (रेशम उत्पादन) को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा जिसे वर्षानुवर्ष आधार पर बढ़ाया जा सकेगा ।

परन्तु संविदा की अवधि में वर्षानुवर्ष आधार पर विस्तारण/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि नवीकृत/विस्तारित की जाएगी ।

(ख) पद का हिमाचल प्रदेश लोक सेवा आयोग के कार्यक्षेत्र में आना:—निदेशक उद्योग, हिमाचल प्रदेश रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात अध्यक्ष को, सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर के समक्ष रखेगा ।

(ग) चयन इन भर्ती एवं प्रोन्नति नियमों में विहित पात्रता शर्तों के अनुसार किया जायेगा ।

(II) संविदात्मक उपलब्धियाँ:—संविदा के आधार पर नियुक्त विकास अधिकारी (रेशम उत्पादन) को ₹14100/— की दर से समेकित नियत संविदात्मक रकम (जो पे बैण्ड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रति मास संदत्त की जाएगी। यदि संविदा में एक वर्ष से अधिक की बढ़ोतरी की जाती है तो पश्चातवर्ती वर्ष (वर्षों) के लिए संविदात्मक उपलब्धियों में ₹423/— (पद के पे बैण्ड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) की रकम वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी ।

(III) नियुक्ति और अनुशासन प्राधिकारी:—निदेशक उद्योग, हिमाचल प्रदेश नियुक्ति एवं अनुशासन प्राधिकारी होगा ।

(IV) चयन प्रक्रिया:—संविदा नियुक्ति की दशा में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा या यदि आवश्यक या समीचीन समझा जाए तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा जिसका स्तर/पाठ्यक्रम आदि सम्बद्ध भर्ती अभिकरण अर्थात् हि0प्र0 अधीनस्थ सेवाएं चयन बोर्ड, हमीरपुर द्वारा अवधारित किया जाएगा ।

(V) संविदात्मक नियुक्ति व्यक्तियों के लिए चयन समिति:—जैसी सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवा चयन बोर्ड, हमीरपुर द्वारा समय-समय पर गठित की जाए ।

(VI) करार:—अभ्यर्थी को, चयन के पश्चात इन नियमों से संलग्न उपाबन्ध-ख के अनुसार करार हस्ताक्षरित करना होगा ।

(VII) निबन्धन और शर्तें:—(क) संविदा के आधार पर नियुक्त व्यक्ति को ₹14100/— की दर से नियत संविदात्मक रकम (जो पे बैण्ड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रति मास संदत्त की जाएगी। संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए पश्चातवर्ती वर्ष (वर्षों) के लिए संविदात्मक उपलब्धियों में ₹423/— की दर से (पे बैण्ड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) की वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएँ जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा ।

(ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थायी आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त किए जाने के लिए दायी होगी ।

(ग) संविदा पर नियुक्त व्यक्ति एक मास की सेवा पूरी करने के पश्चात एक दिन के आकस्मिक अवकाश का हकदार होगा तथापि संविदा पर नियुक्त कर्मचारी सोलह सप्ताह के प्रसूति अवकाश, दस दिन के चिकित्सा अवकाश और पाँच दिन के विशेष अवकाश के लिए भी हकदार होगा/होगी। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 आदि के लिए भी हकदार नहीं होगा/होगी। संविदा पर नियुक्त व्यक्ति को उपरोक्त के सिवाय अन्य किसी प्रकार का कोई अवकाश अनुज्ञात नहीं होगा।

परन्तु अनुपभुक्त आकस्मिक अवकाश, चिकित्सा अवकाश और विशेष अवकाश एक कलैण्डर वर्ष तक संचित किया जा सकेगा और आगामी कलैण्डर वर्ष के लिए अग्रणीत नहीं किया जाएगा।

(घ) नियंत्रण अधिकारी के अनुमोदन के बिना कर्तव्य से अनाधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा तथापि आपवादिक मामलों में जहाँ चिकित्सा आधार पर कर्तव्य (ड्यूटी) से अनाधिकृत अनुपस्थिति के हालात संविदा पर नियुक्त व्यक्ति के नियन्त्रण से बाहर हों तो नियमितकरण के मामले में विचार करते समय ऐसी अवधि अपवर्जित नहीं की जाएगी, परन्तु पदधारी को इस बाबत समय पर नियंत्रण अधिकारी को सूचित करना होगा तथापि संविदा नियुक्त व्यक्ति कर्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार होगा।

परन्तु उसे सरकार के प्रचलित अनुदेशों के अनुसार चिकित्सा अधिकारी द्वारा जारी बीमारी/आरोग्यता प्रमाण पत्र प्रस्तुत करना होगा।

(ङ) संविदा पर नियुक्त पदधारी जिसने तैनाती के एक स्थान पर तीन वर्ष का सेवाकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानान्तरण के लिए पात्र होगा, जहाँ भी प्रशासनिक कारणों से ऐसा करना अपेक्षित हो।

(च) चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण पत्र प्रस्तुत करना होगा। बारह सप्ताह से अधिक समय से गर्भवती महिला प्रसव होने तक, अस्थायी तौर पर अनुपयुक्त बनी रहेगी। ऐसी महिला अभ्यर्थी का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा।

(छ) संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्तव्यों के सम्बन्ध में, दौरे पर जाना अपेक्षित हो, तो व उसी दर पर जैसी नियमित प्रतिस्थानी पदधारी को पद के वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

(ज) नियमित कर्मचारियों की दशा में यथा लागू सेवा नियमों के उपबन्ध जैसे कि एफ0आर0एस0आर0, छुट्टी नियम, साधारण भविष्य निधि नियम, पेंशन नियम एवं आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे। वे इस स्तम्भ में यथावर्णित उपलब्धियों, आदि के लिए हकदार होंगे।

16. आरक्षण:—सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा समय-समय पर अनुसूचित जातियों/अनुसूचित जन जातियों/अन्य पिछड़े वर्गों और अन्य प्रवर्ग के व्यक्तियों के लिए सेवा में आरक्षण की बावत जारी किए गए अदेशों के अधीन होगी।

17. विभागीय परीक्षा:—लागू नहीं।

18. शिथिल करने की शक्ति:—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है, वहां वह, कारणों को लिखित में अभिलिखित करके और हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, आदेश द्वारा, इन नियमों के किन्हीं उपबन्धों को किसी वर्ग या व्यक्ति (व्यक्तियों) के प्रवर्ग या पद (पदों) की बावत, शिथिल कर सकेगी।

विकास अधिकारी (रेशम उत्पादन) और हिमाचल प्रदेश सरकार के मध्य निदेशक उद्योग हिमाचल प्रदेश उद्योग हिमाचल प्रदेश के माध्यम से निष्पादित की जाने वाले संविदा/करार का प्रारूप :

यह करार श्री/श्रीमति पुत्र /पुत्री श्रीनिवासी संविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात् 'प्रथम पक्षकार' कहा गया है) और हिमाचल प्रदेश के राज्यपाल के मध्य निदेशक उद्योग, हिमाचल प्रदेश (जिसे इसमें इसके पश्चात् 'द्वितीय पक्षकार' कहा गया है) के माध्यम से आज तारीख को किया गया ।

'द्वितीय पक्षकार' ने उपरोक्त प्रथम पक्षकार को लगाया है और प्रथम पक्षकार ने विकास अधिकारी (रेशम उत्पादन) के रूप में संविदा के आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी है:—

1. यह कि प्रथम पक्षकार विकास अधिकारी (रेशम उत्पादन) के रूप मेंसे प्रारम्भ होने और को समाप्त होने वाले दिन तक एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेगा। यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्य दिवस को अर्थात् दिन को स्वयंमेव ही पर्यवसित (समाप्त) हो जाएगी तथा सूचना नोटिस आवश्यक नहीं होगा:

परन्तु संविदा की अवधि में वर्षानुवर्ष आधार पर विस्तारण/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण-पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण उस वर्ष के दौरान सन्तोषजनक रहा है और केवल तभी उसकी संविदा की अवधि को नवीकृत/विस्तारित की जाएगी ।

2. प्रथम पक्षकार की संविदात्मक रकम ₹14100/- प्रतिमास होगी ।
3. प्रथम पक्षकार की सेवा पूर्णतया अस्थाई आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है या यदि नियमित पदधारी उस रिक्ति के विरुद्ध नियुक्त/तैनात कर दिया जाता है जिसके लिए प्रथम पक्षकार को संविदा पर लगाया गया है तो नियुक्ति पर्यवसित (समाप्त) किए जाने के लिए दायी होगी ।
4. संविदा पर नियुक्त विकास अधिकारी (रेशम उत्पादन) एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा तथापि संविदा पर नियुक्त व्यक्ति सोलह सप्ताह के प्रसूति अवकाश, दस दिन के चिकित्सा अवकाश और पाँच दिन के विशेष अवकाश के लिए भी हकदार होगा/होगी । वह चिकित्सा प्रतिपूर्ति और एल0टी0 सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी। संविदा पर नियुक्त विकास अधिकारी (रेशम उत्पादन) को उपरोक्त के सिवाय अन्य किसी प्रकार का कोई अवकाश अनुज्ञात नहीं होगा ।

परन्तु अनुपभुक्त आकस्मिक अवकाश, चिकित्सा अवकाश और विशेष अवकाश एक कलैण्डर वर्ष तक संचित किया जा सकेगा और आगामी कलैण्डर वर्ष के लिए अग्रनीत नहीं किया जाएगा ।

5. नियंत्रण अधिकारी के अनुमोदन के बिना कर्तव्य से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा तथापि आपवादिक मामलों में जहाँ पर चिकित्सा आधार पर कर्तव्य (ड्यूटी) से अनधिकृत अनुपस्थिति के हालात संविदा पर नियुक्त व्यक्ति के नियन्त्रण से बाहर हों तो उसके नियमितिकरण के मामले पर विचार करते समय ऐसी अवधि पवर्जित नहीं की जाएगी, परन्तु पदधारी को इस बाबत समय पर नियंत्रक अधिकारी को सूचित करना होगा तथापि संविदा नियुक्त व्यक्ति कर्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार होगा।

परन्तु उसे सरकार के प्रचलित अनुदेशों के अनुसार चिकित्सा अधिकारी द्वारा जारी बीमारी/आरोग्य का प्रमाण पत्र प्रस्तुत करना होगा ।

6. संविदा के आधार पर नियुक्त पदधारी जिसने तैनाती के एक स्थान पर तीन वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानान्तरण के लिए पात्र होगा, जहाँ प्रशासनिक कारणों से ऐसा करना आवश्यक हो ।
7. चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण-पत्र प्रस्तुत करना होगा। महिला अभ्यर्थियों की दशा में, बारह सप्ताह से अधिक की गर्भावस्था प्रसव होने तक, अस्थाई तौर पर अनुपयुक्त बनी रहेगी। ऐसी महिला अभ्यर्थी का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए ।
8. संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी कि नियमित प्रतिस्थानी पदधारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी ।
9. संविदात्मक नियुक्त व्यक्ति(यों) को सामूहिक बीमा योजना के साथ-साथ ई0पी0एफ0/जी0पी0एफ0 भी लागू नहीं होगा ।

इसके साक्ष्यस्वरूप प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने-अपने हस्ताक्षर कर दिए हैं ।

साक्षियों की उपस्थिति में

1.

.....

(नाम व पूरा पता)

2.

.....

(नाम व पूरा पता)

प्रथम पक्ष के हस्ताक्षर

साक्षियों की उपस्थिति में

1.

.....

(नाम व पूरा पता)

2.

.....

द्वितीय पक्ष के हस्ताक्षर

[Authoritative English Text of this Department Notification No.Ind-II(Kha)2-8/2006 Dated 5/3/2016.as required under clause(3) of Article 348 of the Constitution of India].

INDUSTRIES DEPARTMENT

NOTIFICATION

Shimla-2, the 5th March, 2016

No.Ind-II(B)2-8/2006-1.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh, Public Service Commission is pleased to make the Recruitment and Promotion Rules for the post of **Development Officer (Sericulture), Class-III** (Non Gazetted) in the Department of Industries, Himachal Pradesh as per Annexure-A attached to this notification, namely:—

1. Short title and Commencement.—1. These rule may be called the Himachal Pradesh Department of Industries, Development Officer (Sericulture) Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2016

These rule shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Repeal and Savings.—(1) The Himachal Pradesh, Industries Department, Development Officer (Sericulture), Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2007 notified *vide* this department Notification No. Udyog-II(kha)2-8/2006 dated 20-07-2007 are hereby repealed.

(2) Notwithstanding such repeal any appointment made or anything done or any action taken under the relevant rules so repealed under sub-rule (1) supra shall be deemed to have been validity made or done or taken these rules.

By order,
Sd/-

Principal Secretary (Industries).

ANNEXURE-A

RECRUITMENT AND PROMOTION RULES FOR THE POST OF DEVELOPMENT OFFICER (SERICULTURE) (NON-GAZETTED) CLASS-III, IN THE DEPARTMENT OF INDUSTRIES, HIMACHAL PRADESH.

1. **Name of the Post:**—Development Officer (Sericulture)
2. **Number of Posts:**—7 (Seven)
3. **Classification:**—Class-III (Non-Gazetted)
4. **Scale of Pay:**— (i) Pay Scale for regular incumbents
Pay Band ₹10300-34800+ ₹3800 Grade Pay.
(ii) Emoluments for contractual employees
₹14100/- as per details given in Column 15-A.

5. Whether "Selection Post " or "Non Selection Post":—Non-Selection.**6. Age for direct recruitment:—Between 18 and 45 years.**

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the Government including those who have been appointed on adhoc or on contract basis;

Provided further that if a candidate appointed on adhoc basis or on contract basis had become over-age on the date he/she was appointed as such he/she shall not be eligible for any relaxation in the prescribed age -limit by virtue of his/her such adhoc or contract appointment; Provided further that upper age -limit is relaxable for Scheduled Castes/ Scheduled Tribes/ Other categories of persons to the extent permissible under the general or special order(s) of the Himachal Pradesh Government;

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be Government Servants before absorption in Public Sector Corporations/Autonomous Bodies at the time of initial constitutions of such Corporations/Autonomous Bodies shall be allowed age concession in direct recruitment as admissible to Government servants. This concession will not, however, be admissible to such staff of the Public Sector Corporations/ Corporations/Autonomous Bodies who are/were subsequently appointed by such Corporations/ Autonomous Bodies and who are/were finally absorbed in the service of such Corporations/Autonomous Bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies.

Notes :— (1) Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting applications or notified to the Employment Exchanges or as the case may be.

(2) Age and experience in the case of direct recruitment, relaxable at the discretion of the Himachal Pradesh Public Service Commission in case the candidate is otherwise well qualified:

7. Minimum educational and other qualifications required for direct recruit(s):—

(a) Essential Qualification(s):— (i) B.Sc. (Agriculture) or BSc. with Zoology/Botany Degree from recognized University.

(ii) At least five years experience in Sericulture operation in Sericulture organisation after acquiring Degree.

(b) Desirable Qualification(s):— Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.

8. Whether age and educational qualification(s) prescribed for direct recruit (s) will apply in the case of the promotee (s):—Age :— Not applicable.

Essential Qualification :— Not applicable.

9. Period of probation, if any:—Two years subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

10. Method (s) of recruitment, whether by direct recruitment or by promotion, secondment, transfer and the percentage of post (s) to be filled in by various methods:— 100% by promotion failing which by direct recruitment on a regular basis or by recruitment on contract basis, as the case may be.

11. In case of recruitment by promotion, secondment, transfer, grade from which promotion/ secondment/ transfer is to be made:—By promotion from amongst the Mulberry Superintendents/Research Assistants/ Senior Sericulture Inspector/ Technical Supervisor who possess 3 years regular service or regular combined with continuous adhoc service, if any in the grade.

For the purpose of promotion a combined seniority list of feeder categories based on length of service without disturbing their cadre-wise inter-se- seniority shall be prepared.

12. If a Departmental Promotion Committee exists, what is its composition?—As may be constituted by the Government from time to time.

13. Circumstances under which the H.P.S.C. is to be consulted in making recruitment:—As required under the Law.

14. Essential requirement for a direct recruitment:—A candidate for appointment to any service or post must be a citizen of India.

15. Selection for appointment to the post by direct recruitment:—Selection for appointment to the post in the case of direct recruitment shall be made on the basis of viva-voce test if the Himachal Pradesh Public Service Commission or other recruiting authority, as the case may be, so consider necessary or expedient by a written test or practical test, the standard/syllabus, etc. of which will be determined by the Commission/other recruiting authority, as the case may be.

15. A Selection for appointment to the post by contract appointment:—Notwithstanding anything contained in these Rules, contract appointments to the post will be made subject to terms and conditions given below:-

(I) CONCEPT:— (a) Under this policy the Development Officer (Sericulture) in Department of Industries, H.P. will be engaged on contract basis initially for one year, which may be extendable on year- to-year basis.

Provided that for extension/renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his/her period of contract is to be renewed/extended.

(b) POST FALLS WITHIN THE PURVIEW OF HPSSSB:—The Director of Industries, H.P. after obtaining the approval of the Government to fill up the vacant posts on contract basis will place the requisition with the concerned recruiting agency i.e. Himachal Pradesh Subordinate Service Selection Board, Hamirpur.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these R&P Rules.

(II) CONTRACTUAL EMOLUMENTS:—The Development Officer (Sericulture) appointed on contract basis will be paid consolidated fixed contractual amount @ ₹14,100/- per month

(which shall be equal to minimum of the pay band +grade pay). An amount of ₹423/- (3% of the minimum of the pay band +grade pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(III) APPOINTING/DISCIPLINARY AUTHORITY:—The Director of Industries, H.P. will be appointing and disciplinary authority.

(IV) SELECTIONPROCESS:—Selection for appointment to the post in the case of contract appointment will be made on the basis of viva-voce test or if considered necessary or expedient by a written test or practical test, the standard/syllabus etc. of which will be determined by the concerned recruiting agency i.e. the Himachal Pradesh Subordinate ServiceSelectionBoard,Hamirpur.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS:—As may be constituted by the concerned recruiting agency i.e. the Himachal Pradesh Subordinate Service Selection Board,Hamirpur from time to time.

(VII) AGREEMENT:—After selection of a candidate, he/she shall sign an agreement as per Annexure-B appended to these Rules.

(VII) TERMSANDCONDITIONS :—(a) The contract appointee will be paid fixed contractual amount @ ₹14,100/- per month (which shall be equal to minimum of pay band + grade pay). The contract appointee will be entitled for increase in contractual amount @ ₹ 423/- (3% of the minimum of the pay band + grade pay of the post) for further extended years and no other allied benefits such as senior/ selection scales etc. will be given.

(b) The service of the contract appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory.

(c) Contract appointee will be entitled for one day's casual leave after putting one month service. However, the contract employee will also be entitled for 16 weeks Maternity leave and 10 days Medical leave and 05 days special leave. He/She shall not be entitled for Medical Reimbursement and LTC etc. No leave of any other kind except above is admissible to the contract appointee.

Provided that the unavailed Casual Leave, Medical leave and special leave can be accumulated upto the Calendar Year and will not be carried forward for the next Calendar Year.

(d) Unauthorized absence from the duty without the approval of the Controlling Officer shall automatically lead to the termination of the contract. However, in exceptional cases where the circumstances for un-authorized absence from duty were beyond his/her control on medical grounds, such period shall not be excluded while considering his/her case for regularization but the incumbent shall have to intimate the controlling authority in this regard well in time. However, the contract appointee shall not be entitled for contractual amount for this period of absence from duty.

Provided that he/she shall submit the certificate of illness/fitness issued by the Medical Officer, as per prevailing instructions of the Government.

(e) An official appointed on contract basis who has completed three years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his/her fitness from a Govt./ Registered Medical Practitioner. Women candidate pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The women candidate will be re-examined for the fitness from an authorized Medical Officer/ Practitioner.

(g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counterpart official at the minimum of pay scale.

(h) Provisions of service rules like FR SR, Leave Rules, GPF Rules, Pension Rules & Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emoluments etc. as detailed in this column.

16. Reservation:—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled Castes/ Scheduled Tribes/ Other Backward Classes / other categories of persons issued by the Himachal Pradesh Government from time to time.

17. Departmental Examination:—Not Applicable

18. Powers to Relax:—Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the Himachal Pradesh Public Service Commission relax any of the provision (s) of these Rules with respect to any Class or Category of person(s) or post(s).

ANNEXURE-B

Form of contract/agreement to be executed between the Development Officer (Sericulture) and the Government of Himachal Pradesh through Director of Industries, H.P.

This agreement is made on this day of in the year..... between Sh. / Smt. S/o/D/o Sh. R/o contract appointee (hereinafter called the FIRST PARTY), AND The Governor, Himachal Pradesh through Director of Industries, Himachal Pradesh (here-in-after called the SECOND PARTY).

Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a Development Officer (Sericulture) on contract basis on the following terms and conditions :—

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as Development Officer (Sericulture) for a period of 1 year commencing on the day of and ending on the day of It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall ipso-facto stand terminated on the last working day i.e. on and information notice shall not be necessary.

Provided that for-further extension/renewal of contract period the HOD shall issue a certificate that the service and conduct of the contract appointee was satisfactory during the year and only then the period of contract is to be renewed/extended.

2. That contractual amount of the FIRST PARTY will be ₹ 14, 100/- per month.
3. The service of FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed/posted against the vacancy for which the first part was engaged on contract.
4. Contractual Development Officer (Sericulture) will be entitled for one day's casual leave after putting, one month service. However, the Contract employee will also be entitled for 16 weeks Maternity Leave, 10 days Medical Leave and 5 days special leave. He/She shall not be entitled for Medical Reimbursement and LTC etc. No leave of any other kind except above is admissible to the contractual Development Officer (Sericulture).

Provided that the un-availed casual Leave, medical leave and special leave can be accumulated upto the calendar year and will not be carried forwarded for the next calendar year.

5. Unauthorized absence from the duty without the approval of the Controlling Officer shall automatically lead to the termination of the contract. However, in exceptional cases where the circumstances for un-authorized absence from duty were beyond his/her control on medical grounds, such period shall not be excluded while considering his/her case for regularization but the incumbent shall have to intimate the controlling authority in this regard well in time. However, the contract appointee shall not be entitled for contractual amount for this period of absence from duty.

Provided that he/she shall submit the certificate of illness/fitness issued by the Medical Officer, as per prevailing instructions of the Government.

6. An official appointed on contract basis who have completed three years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.
7. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. In case of women candidates pregnant beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/Practitioner.
8. Contract official shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counterpart official at the minimum of the pay scale.
9. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to the contractual appointee(s).

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.'

IN THE PRESENCE OF WITNESS:

1.

.....

.....

(Name and Full Address)

2.

.....

.....

(Name and Full Address)

Signature of the (FIRST PARTY)

IN THE PRESENCE OF WITNESS:

1.

.....

.....

(Name and Full Address)

2.

.....

.....

(Name and Full Address)

Signature of the (SECOND PARTY)

आबकारी एवं कराधान विभाग

अधिसूचना

शिमला-2, 9 मार्च, 2016

संख्या:ई0एक्स0एन0-एफ(10)-25/2014-लूज.-हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश स्थानीय क्षेत्र में माल के प्रवेश पर कर अधिनियम, 2010 (2010 का अधिनियम संख्यांक 9) की धारा 3 की उपधारा (5) द्वारा प्रदत्त शक्तियों द्वारा प्रयोग करते हुए, उक्त अधिनियम से संलग्न अनुसूची-2 में तारीख 1.4.2016 से निम्नलिखित संशोधन करने के आदेश देते हैं, अर्थात् :-

संशोधन

हिमाचल प्रदेश स्थानीय क्षेत्र में माल के प्रवेश पर कर अधिनियम, 2010 से संलग्न अनुसूची-2 में क्रम संख्या 10 के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:-

- "10. (क) अनुसूची-2 की मद संख्या 5 के अन्तर्गत आने वाली मद से भिन्न सरकारी विभागों, बोर्डों और निगमों द्वारा उपभोग या उपयोग के लिए क्रय की गई समस्त मदें — पांच प्रतिशत
- (ख) हिमाचल प्रदेश राज्य विद्युत परिषद् द्वारा उपभोग या उपयोग के लिए क्रय किए गए इलैक्ट्रानिक एनर्जी मीटरज — ग्यारह प्रतिशत ।"।

आदेश द्वारा,
अतिरिक्त मुख्य सचिव,
(आबकारी एवं कराधान)।

[Authoritative English Text of this Department Notification No. EXN-F(10)-25/2014-Loose, dated 09/03/2016 as required under clause (3) of article 348 of the Constitution of India].

EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

Shimla-171002, the 9th March, 2016

No.EXN-F(10)-25/2014-Loose.—In exercise of the powers conferred by sub-section (5) of section 3 of the Himachal Pradesh Tax on Entry of Goods into Local Area Act, 2010 (Act No.9 of 2010), the Governor of Himachal Pradesh is pleased to make the following amendments in Schedule-II appended to the said Act w.e.f. 1.4.2016, namely:—

AMENDMENT

In Schedule-II appended to the Himachal Pradesh Tax on Entry of Goods into Local Area Act, 2010, for the Sr. No.10, the following shall be substituted, namely:—

- "10. (a) All items purchased by Government Departments, Boards and Corporations for Consumption or use other than those covered under item No. 5 of Schedule-II 5%
- (b) Electronic Energy Meters purchased by Himachal Pradesh State Electricity Board for consumption or use 11% .".

By order,
Sd/-
Additional Chief Secretary (E&T).

**In the Court of Shri Hemis Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh**

Papu Ram s/o Shri Mukandi Lal, r/o Dowan Dale Phagli, Shimla, Tehsil and District Shimla, H. P.

Versus

General Public

. . Respondent.

Application under Section 13(3) of Birth and Death Registration Act, 1969.

Whereas Papu Ram s/o Shri Mukandi Lal, r/o Dowan Dale Phagli, Shimla, Tehsil and District Shimla, H. P. has applied for registration the name and date of birth of his son namely Dinesh Kumar (DOB 12-1-1999) in the record of Municipal Corporation Shimla, District Shimla, H.P.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 9-4-2016 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 8th day of March, 2016.

Seal.

HEMIS NEGI,
*Sub-Divisional Magistrate,
Shimla (Urban).*

**In the court of Shri H. S. Rana, H.A.S. Marriage Officer (SDM) Paonta Sahib,
District Sirmaur, Himachal Pradesh**

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT, 1954

In the matter of

Shri Shubham Kundlas s/o Shri Ranjeet Singh Kundlas, r/o VPO Kolar, Tehsil Paonta Sahib, District Sirmaur, H.P. and Smt. Divya Walia d/o Shri Pradeep Kumar, r/o Police Colony Nahan, District Sirmaur, H.P.

Versus

General Public

Whereas Shri Shubham Kundlas s/o Shri Ranjeet Singh Kundlas, r/o VPO Kolar, Tehsil Paonta Sahib, District Sirmaur, H.P. and Smt. Divya Walia d/o Shri Pradeep Kumar, r/o Police Colony Nahan, District Sirmaur, H.P. have filed an application for registration of their marriage solemnized on 02-04-2015 and they have been living as husband and wife ever since then. Notices are given to all concerned and General Public to this effect that if anybody has any objection

regarding the registration of marriage duly solemnized on 02-04-2015 Shri Shubham Kundlas s/o Shri Ranjeet Singh Kundlas, r/o VPO Kolar, Tehsil Paonta Sahib, District Sirmaur, H.P. and Smt. Divya Walia d/o Shri Pradeep Kumar, r/o Police Colony Nahan, District Sirmaur, H.P. he should file written objections and appear personally before this court within 30 days from the date of issue of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court. Issued under my hand and office seal on dated 23-02-2016.

Seal.

(HARI SINGH RANA) HAS,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Paonta Sahib, District Sirmaur.*

**In the court of Shri H. S. Rana, H.A.S. Marriage Officer (SDM) Paonta Sahib,
District Sirmaur, Himachal Pradesh**

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT, 1954

In the matter of

Shri Gujinder Singh s/o Shri Waryam Singh, r/o House No. 222/5 Near State Bank of Patiala, Tehsil Paonta Sahib, District Sirmaur, H.P. and Smt. Harkamal Kaur Nagpal d/o Shri Balwinder Singh, r/o House No. 223-225 Durganagar, Hishar Road Ambala Hry.

Versus

General Public

Whereas Shri Gujinder Singh s/o Shri Waryam Singh, r/o House No. 222/5 Near State Bank of Patiala, Tehsil Paonta Sahib, District Sirmaur, H.P. and Smt. Harkamal Kaur Nagpal d/o Shri Balwinder Singh, r/o House No. 223-225 Durganagar, Hishar Road Ambala Hry. have filed an application for registration of their marriage solemnized on 29-11-2010 and they have been living as husband and wife ever since then. Notices are given to all concerned and General Public to this effect that if anybody has any objection regarding the registration of marriage duly solemnized on 29-11-2010 Shri Gujinder Singh s/o Shri Waryam Singh, r/o House No. 222/5 Near State Bank of Patiala, Tehsil Paonta Sahib, District Sirmaur, H.P. and Smt. Harkamal Kaur Nagpal d/o Shri Balwinder Singh, r/o House No. 223-225 Durganagar, Hishar Road Ambala Hry. he should file written objections and appear personally before this court within 30 days from the date of issue of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court. Issued under my hand and office seal on dated 23-02-2016.

Seal.

(HARI SINGH RANA) HAS,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Paonta Sahib, District Sirmaur.*

**In the court of Shri H. S. Rana, H.A.S. Marriage Officer (SDM) Paonta Sahib,
District Sirmaur, Himachal Pradesh**

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT, 1954

In the matter of

Shri Joginder Singh s/o Shri Bharat Singh, r/o Village Khali Achhon, Tehsil Paonta Sahib, District Sirmaur, H.P. and Smt. Bimla Devi d/o Shri Devi Ram, r/o Village Saro, Tehsil Paonta Sahib, District Sirmaur, H.P.

Versus

General Public

Whereas Shri Joginder Singh s/o Shri Bharat Singh, r/o Village Khali Achhon, Tehsil Paonta Sahib, District Sirmaur, H.P. and Smt. Bimla Devi d/o Shri Devi Ram, r/o Village Saro, Tehsil Paonta Sahib, District Sirmaur, H.P. have filed an application for registration of their marriage solemnized on 20-06-1984 and they have been living as husband and wife ever since then. Notices are given to all concerned and General Public to this effect that if anybody has any objection regarding the registration of marriage duly solemnized on 20-06-1984 Shri Joginder Singh s/o Shri Bharat Singh, r/o Village Khali Achhon, Tehsil Paonta Sahib, District Sirmaur, H.P. and Smt. Bimla Devi d/o Shri Devi Ram, r/o Village Saro, Tehsil Paonta Sahib, District Sirmaur, H.P. he should file written objections and appear personally before this court within 30 days from the date of issue of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court. Issued under my hand and office seal on dated 18-02-2016.

Seal.

(HARI SINGH RANA) HAS,
*Marriage Officer-cum-Sub-Divisional Magistrate,
Paonta Sahib, District Sirmaur.*

ब अदालत श्री हरि सिंह राणा, हि0प्र0से0, अतिरिक्त जिला पंजीयक विवाह एवं उप-मण्डल अधिकारी (ना0),
पांवटा साहिब, जिला सिरमौर, हि0 प्र0

श्री आशुतोष पुत्र श्री रवि पाल, निवासी ग्राम पिपलीवाला, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

बनाम

1. सचिव ग्राम पंचायत पिपलीवाला, तहसील पांवटा साहिब
2. आम जनता

प्रार्थना-पत्र जेरे धारा 8(4) के अन्तर्गत विवाह पंजीकरण बारे।

श्री आशुतोष पुत्र श्री रवि पाल, निवासी ग्राम पिपलीवाला, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश ने मय शपथ-पत्र प्रार्थना इस अनुरोध के साथ प्रस्तुत की है कि उसका विवाह श्रीमती काजल पुत्री श्री सुरेन्द्र कुमार, नि0 129/वंशीपुर, तहसील विकास नगर, जिला देहरादून के साथ दिनांक 30-05-2014 को हुआ है तथा अज्ञानतावश ग्राम पंचायत पिपलीवाला, तहसील पांवटा साहिब के रिकार्ड में विवाह का पंजीकरण नहीं करवा सका है जिसे अब पंजीकरण करवाना चाहता है।

अतः इस सम्बन्ध में श्री आशुतोष पुत्र श्री रवि पाल, निवासी ग्राम पिपलीवाला, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश की शादी के पंजीकरण बारे किसी व्यक्ति को कोई एतराज हो तो वह दिनांक 14-03-2016 तक असालतन अथवा वकालतन अधोहस्ताक्षरी की अदालत में उपस्थित होकर प्रस्तुत कर सकता है। निर्धारित तिथि तक कोई एतराज प्राप्त न होने की सूरत में प्रार्थी का विवाह पंजीकरण एवं दर्ज करने के नियमानुसार आदेश पारित कर दिये जायेंगे।

आज दिनांक 15-02-2016 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हरि सिंह राणा (हि0प्र0से0),
अतिरिक्त जिला पंजीयक विवाह एवं उप-मण्डल दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हि0 प्र0।

ब अदालत श्री हरि सिंह राणा, हि0प्र0से0, अतिरिक्त जिला पंजीयक विवाह एवं उप-मण्डल अधिकारी (ना0),
पांवटा साहिब, जिला सिरमौर, हि0 प्र0

श्री सुरेन्द्र सिंह पुत्र स्व0 श्री मोहन सिंह, निवासी ग्राम बरोटीवाला, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

बनाम

1. सचिव ग्राम पंचायत शिवपुर, तहसील पांवटा साहिब
2. आम जनता

प्रार्थना-पत्र जेरे धारा 8(4) के अन्तर्गत विवाह पंजीकरण बारे।

श्री सुरेन्द्र सिंह पुत्र स्व0 श्री मोहन सिंह, निवासी ग्राम बरोटीवाला, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश ने मय शपथ-पत्र प्रार्थना इस अनुरोध के साथ प्रस्तुत की है कि उसका विवाह श्रीमती गुरप्रीत कौर पुत्री स्व0 श्री सुरेन्द्र सिंह, नि0 मकान नं0 183, वार्ड नं0 3 पांवटा साहिब के साथ दिनांक 06-12-2014 को हुआ है तथा अज्ञानतावश ग्राम पंचायत शिवपुर, तहसील पांवटा साहिब के रिकार्ड में विवाह का पंजीकरण नहीं करवा सका है जिसे अब पंजीकरण करवाना चाहता है।

अतः इस सम्बन्ध में श्री सुरेन्द्र सिंह पुत्र स्व0 श्री मोहन सिंह, निवासी ग्राम बरोटीवाला, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश की शादी के पंजीकरण बारे किसी व्यक्ति को कोई एतराज हो तो वह दिनांक 14-03-2016 तक असालतन अथवा वकालतन अधोहस्ताक्षरी की अदालत में उपस्थित होकर प्रस्तुत कर सकता है। निर्धारित तिथि तक कोई एतराज प्राप्त न होने की सूरत में प्रार्थी का विवाह पंजीकरण एवं दर्ज करने के नियमानुसार आदेश पारित कर दिये जायेंगे।

आज दिनांक 15-02-2016 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हरि सिंह राणा (हि0प्र0से0),
अतिरिक्त जिला पंजीयक विवाह एवं उप-मण्डल दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हि0 प्र0।

**In the court of Marriage Officer (S.D.M.) Paonta Sahib, District Sirmaur,
Himachal Pradesh**

NOTICE UNDER SECTION 16 OF SPECIAL MARRIAGE ACT.

Whereas Shri Mithun Basak son of Shri Ganga Ram Basak aged about 25 years, r/o Village Gochiya, Harishchanderpur, Malda and Kamlesh Kaur d/o Shri Ram Kishan aged about 28 years, r/o Badripur, Tehsil Paonta Sahib, District Sirmaur, H.P. have filed application for registration of their marriage, which was solemnized on 04-09-2011 and they have been living husband and wife ever since then.

Notices are given to all concerned and General Public to this effect that if anybody has got any objection regarding the registration of marriage duly solemnized on 04-09-2011 between above said Shri Mithun Basak son of Shri Ganga Ram Basak aged about 25 years, r/o Village Gochiya, Harishchanderpur, Malda and Kamlesh Kaur, d/o Shri Ram Kishan aged about 28 years, r/o Badripur, Tehsil Paonta Sahib, District Sirmaur, H.P. they should file their written objections and appear personally or through their authorized agents before me within the period of thirty days from the date of issue of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court and later on no objection will be heard and accepted.

Issued under my hand and seal.

Seal.

Sd/-
Marriage Officer (S D M),
Paonta Sahib, District Sirmaur.

ब अदालत श्री हरि सिंह राणा, हि0प्र0से0, अतिरिक्त जिला पंजीयक विवाह एवं उप-मण्डल अधिकारी (ना0),
पांवटा साहिब, जिला सिरमौर, हि0 प्र0

श्री जाहिद अली पुत्र श्री अशरफ अली, निवासी ग्राम फतेहपुर, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

बनाम

1. सचिव ग्राम पंचायत माजरा, तहसील पांवटा साहिब
2. आम जनता

प्रार्थना-पत्र जेरे धारा 8(4) के अन्तर्गत विवाह पंजीकरण बारे।

श्री जाहिद अली पुत्र श्री अशरफ अली, निवासी ग्राम फतेहपुर, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश ने मय शपथ-पत्र प्रार्थना इस अनुरोध के साथ प्रस्तुत किया है कि उसका विवाह श्रीमती शहजहान पुत्री श्री रफीक, नि0 मोहल्ला खारदियां, तहसील छछरोली, जिला यममुनानगर के साथ दिनांक 17-01-2015 को हुआ है तथा अज्ञानतावश ग्राम पंचायत माजरा, तहसील पांवटा साहिब के रिकार्ड में विवाह का पंजीकरण नहीं करवा सका है जिसे अब पंजीकरण करवाना चाहता है।

अतः इस सम्बन्ध में श्री जाहिद अली पुत्र श्री अशरफ अली, निवासी ग्राम फतेहपुर, तहसील पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश की शादी के पंजीकरण बारे किसी व्यक्ति को कोई एतराज हो तो वह दिनांक 11-03-2016 तक असालतन अथवा वकालतन अधोहस्ताक्षरी की अदालत में उपस्थित होकर प्रस्तुत

कर सकता है। निर्धारित तिथि तक कोई एतराज प्राप्त न होने की सूरत में प्रार्थी का विवाह पंजीकरण एवं दर्ज करने के नियमानुसार आदेश पारित कर दिये जायेंगे।

आज दिनांक 12-02-2016 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हरि सिंह राणा (हि0प्र0से0),
अतिरिक्त जिला पंजीयक विवाह एवं उप-मण्डल दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर, हि0 प्र0।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना, तहसील व जिला ऊना (हि0 प्र0)

नोटिस बनाम : जनता आम

सन्धया देवी

बनाम

आम जनता

दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

सन्धया देवी पत्नी बालम चन्द, निवासी अजोली, तहसील नंगल, जिला रोपड़ (पंजाब) ने इस अदालत में दरखास्त दी है कि उसके पुत्र प्रवेश कुमार का जन्म गांव नगंड़ा में दिनांक 04-06-1994 को हुआ था, परन्तु इस बारे पंचायत के रिकॉर्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिए जाएं।

अतः इस नोटिस के माध्यम से सर्व-साधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त जन्म के पंजीकरण होने बारे कोई उजर/एतराज हो तो वह दिनांक 29-03-2016 को प्रातः दस बजे अधोहस्ताक्षरी के समक्ष असालतन/वकालतन हाजिर आकर पेश कर सकता है। अन्यथा उपरोक्त जन्म का पंजीकरण करने के आदेश दे दिए जाएंगे।

आज दिनांक 29-02-2016 को हस्ताक्षर मेरे व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि0 प्र0)।

न्यायालय तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना, जिला ऊना (हि0 प्र0)

दावा संख्या :/Teh. Una/M. Reg./20.....

श्री मनीष औहरी पुत्र श्री रिपू दमन औहरी, जात खत्री, गांव मैहतपुर, डा0 मैहतपुर, तहसील ऊना, जिला ऊना (हि0 प्र0)।

बनाम

आम जनता

दावा अन्तर्गत धारा 8(4) विवाह पंजीकरण अधिनियम, 1996.

उपरोक्त मुकद्दमा उनवान वाला में श्री मनीष औहरी पुत्र श्री रिपू दमन औहरी, जात खत्री, गांव मैहतपुर, डा0 मैहतपुर, तहसील ऊना, जिला ऊना (हि0 प्र0) ने इस न्यायालय में प्रार्थना-पत्र प्रस्तुत किया है कि उसका विवाह दिनांक 21-01-2015 को श्रीमती मोनिका शर्मा पुत्री श्री राम गोपाल शर्मा, जात ब्राह्मण, गांव ऊना, डाकघर ऊना, तहसील ऊना, जिला ऊना (हि0 प्र0) के साथ हुआ है। लेकिन अज्ञानता के कारण अपने विवाह का इन्द्राज स्थानीय रजिस्ट्रार विवाह पंजीकरण मैहतपुर, तहसील ऊना, जिला ऊना (हि0प्र0) में न करवा सका।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि उपरोक्त वर्णित के विवाह का इन्द्राज रजिस्ट्रार विवाह स्थानीय पंजीकरण मैहतपुर, तहसील ऊना, जिला ऊना (हि0 प्र0) में दर्ज करवाने बारे किसी को एतराज हो तो वह दिनांक 27-03-2016 को इस न्यायालय में उपस्थित होकर प्रस्तुत कर सकता है, अन्यथा इसके बाद उक्त वर्णित विवाह के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबले समायत न होगा।

आज दिनांक 27-02-2016 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि0 प्र0)।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना, तहसील व जिला ऊना (हि0 प्र0)

नोटिस बनाम : जनता आम

बान्ता राम

बनाम

आम जनता

दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

श्री बान्ता राम पुत्र श्री तुणिया राम, निवासी पंजावर, तहसील ऊना, जिला ऊना ने इस अदालत में दरखास्त दी है कि उसके भाई ननाक चन्द की मृत्यु गांव पंजावर में दिनांक 24-06-2010 को हुई थी, परन्तु इस बारे पंचायत के रिकॉर्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिए जाएं।

अतः इस नोटिस के माध्यम से सर्व-साधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त मृत्यु के पंजीकरण होने बारे कोई उजर/एतराज हो तो वह दिनांक 29-03-2016 को प्रातः दस बजे अधोहस्ताक्षरी के समक्ष असालतन/वकालतन हाजिर आकर पेश कर सकता है। अन्यथा उपरोक्त मृत्यु का पंजीकरण करने के आदेश दे दिए जाएंगे।

आज दिनांक 29-02-2016 को हस्ताक्षर मेरे व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि0 प्र0)।

CHANGE OF NAME

I, Amit Kumar, aged 37 years, s/o Shri Roshan Lal, r/o Village Baryali, P.O. Darlaghat, Tehsil Arki, District Solan do hereby solemnly affirm that the actual name of my son is Aarav Thakur, whereas it was wrongly written in the record of M.C. Shimla. The name of my son be corrected as Aarav Thakur in place of Khushal.

AMIT KUMAR,
s/o Shri Roshan Lal,
r/o Village Baryali, P.O. Darlaghat,
Tehsil Arki, District Solan (H.P.).